Public Utilities

FORTNIGHTLY

Volume LI No. 7 March 26, 1953

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

Public Utilities FORTNIGHTLY

VOLUME LI MARCH 26, 1953 NUMBER 7

ARTICLES

FEATURE SECTIONS

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Pages with the Editors

IN the election campaign last fall, both the major party candidates for President of the United States deplored the drift toward centralized government. But it was Eisenhower who spoke up in concrete terms and pledged that he would stop the tendency towards running the whole nation from a set of push buttons in Washington, D. C. Since taking office, the President's stand on the tidelands oil and gas question, statements by Secretary of Interior McKay and Secretary of Commerce Weeks, and the President's own State of the Union message, show that the administration is prepared to do something about this important over-all question.

SPECIFICALLY, the administration seems to be concerned with checking the tendency of the Federal government to dominate the state and local economy and even the legislative branch of the Federal government. Nowhere has this drift towards administrative absolutism become so apparent as in the field of public utility regulation and natural resource development. Whether in its rôle as umpire over interstate business-managed utilities, or as a constructor and operator of multipurpose dams and similar resource developments, Federal government *versus* "home rule" has become a persistent and increasingly irritating issue.

ARTHUR T. VANDERBILT

GEOFFREY N. CALVERT

THE leading article in this issue is based upon one of a series of three lectures by a leading jurist of the country, CHIEF JUSTICE ARTHUR T. VANDERBILT of the supreme court of New Jersey. These lectures, delivered at the University of Nebraska in the spring of 1952, have been published in full text by the University of Nebraska Press, under the title "The Doctrine of Separation of Powers and Its Present-day Significance." JUSTICE VANDERBILT is a native of New Jersey, who was educated at Wesleyan University, Middletown, Connecticut (AB, '10; AM, '12); took his law at Columbia (LLB, '13); and has since received the honorary degree LLD at a number of universities. He became professor of law at New York University in 1914 and dean in 1943. He was appointed chief justice of the New Jersey Supreme Court in 1948.

* * * *

THE public utility industries have long taken the lead of American business enterprise in establishing and

keeping up to date employee pensions.

GEOFFREY N. CALVERT, author of this article on "Taking the Gamble Out of Pensions," is a fellow of the Institute of Actuaries and an associate of the Society of Actuaries, a fellow of the Royal Statistical Society, a fellow of the Royal Economic Society, and a fellow of the Royal Society of Arts. He is also a graduate in economics and has spent several years engaged in economic research work, as well as many years in the pension consulting field. As manager of the consulting actuarial division of the nationally known firm of Alexander & Alexander, MR. CALVERT is responsible for the practical development of retirement benefit programs for many large industrial corporations.

* * * *

EDWARD FALCK, author of the article entitled "Impact of FPC Rate Regulation on Natural Gas Production," is a native of New York city. He was educated at Columbia University (AB, '30; BS, '31; MS, '32). He became director of rates and research with the Tennessee Valley Authority in 1933. In 1937 he became associated with the private power industry as a special assistant to the vice president of the Consolidated Edison Company of New York city. During the war, FALCK came to Washington to serve with the War Production Board. He will be best recalled by many readers for his work in the old WPB Office of War Utilities, of which he became the director in 1944, succeeding Julius A. Krug. Since the end of the war, MR. FALCK has been engaged in private practice as a consulting engineer with offices in New York and Washington.

© *Chase-Statler Photo*
EDWARD FALCK

LINCOLN SMITH

* * * *

REGIONAL utility development should stress economic rather than the political approach. But it is often difficult to draw a clear-cut distinction with the new administration emphasizing the "decentralization" approach. What is the outlook for future regulatory administration? DR. LINCOLN SMITH, university professor and specialist in the field of regulatory administration, gives us an advance view in his article beginning on page 427.

LINCOLN SMITH is a political scientist, specializing in politics and public administration. He has taught at Yale, the University of Pennsylvania, and the University of California, Los Angeles. He is a native of Maine and a graduate of Bowdoin College. He took his AM and PhD degrees at the University of Wisconsin.

THE next number of this magazine will be out April 9th.

The Editors

Coming IN THE NEXT ISSUE

★

DREAMS THE TAXPAYER DIDN'T HAVE TO PAY FOR. PART I.

We hear a good deal these days about the respective responsibility of the Federal and state governments for local public works and allied improvements. The Eisenhower administration has given considerable thought to developing more "home rule" responsibility for such programs. But little is heard of improvements, which actually benefit the entire population of an area without a penny's expense to the taxpayer—Federal or state. These are improvements bought and paid for by business-managed utility companies, which also pay taxes on their operations over and above the "social dividend" which such company structures provide. J. Louis Donnelly of the editorial staff of the New York **Journal of Commerce** has made a survey of various examples of such utility activity in this 2-part article.

POWER IN THE NORTHEAST

The Yankee element of our northeast area has many characteristic attributes —thrift, integrity, and leadership, to mention only three. But an increasingly rare characteristic in these days of paternalistic government handouts and subsidies is a spirit of independence. This New England attitude of paying one's own way and running one's own affairs is well illustrated in the controversy over a proposed Federal power development in that region. Lincoln Smith, a university professor, gives us an analytical report on the Yankee reaction to the idea of tying its power supply to Federal apron strings.

TRANSIT OPERATING RATIO—ANOTHER VIEW

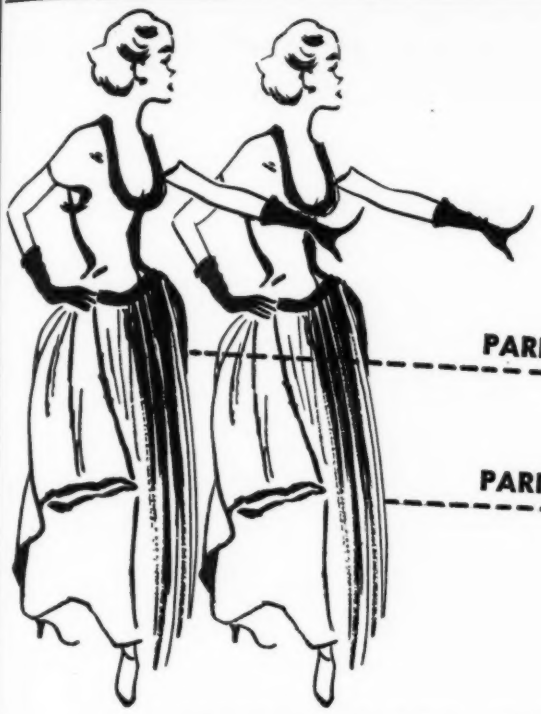
During the last couple of years transit utilities have found it increasingly difficult to attract private capital on conventional rate-of-return levels allowed by the regulatory commissions to other types of utilities in rate fixing. The relatively small investment in relation to high operating costs and sensitiveness to inflationary trends has made the transit industry consider the advisability of basing rates on operating ratios rather than return-on-rate base. But there are legal and equitable objections to this proposal (which has been favorably discussed in an early article), according to Dr. Laurence S. Knappen, former Federal economist and now public utility consultant in Washington, D. C.

POLITICAL POWER OF THE SMALL SHAREHOLDER

The tail that wagged the dog might be another way of referring to the political power which small economic units sometimes possess. Small business and small shareholders in Big Business have a popularity and influence by very reason of their smallness—sometimes out of proportion to their size. Ernest Frederick Lloyd, former president of the Michigan Gas Association, makes the interesting suggestion that the small utility shareholder can be useful in defeating unwise public ownership proposals and other antiutility measures.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***



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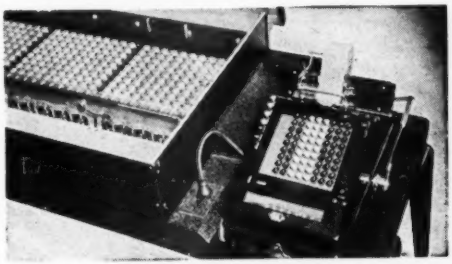

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—MONTAIGNE

CLARENCE MANION
Dean emeritus, Notre Dame Law School.

"A constantly swelling government is a sure sign of moral sickness of the people under it. When the government swells, the people shrink."

EDITORIAL STATEMENT
The Guaranty Survey.

"If government officials have the welfare of the wage earners at heart, they too will put a stop to the outcry against profits, in which they have been probably even more vociferous than the acknowledged spokesman for labor."

WILLIAM HENRY CHAMBERLIN
Columnist.

"Some functions of controlling the lives of American citizens which the Federal bureaucracy has arrogated to itself during the last twenty years should be cropped altogether. Others should be transferred to state and local agencies."

THOMAS I. PARKINSON
President, Equitable Life Assurance Society.

"[Interstate Commerce Commission rate prescriptions have been] too little, too late, and too inelastic during an inflationary period to keep pace with the rapidly rising labor and material costs and the receding purchasing power of the dollar."

CHARLES E. BENNETT
President, The Manufacturers Light & Heat Company.

"Are you tired of the lip service given to free enterprise? There was a day when American industry never heard that phrase. There was no need, since industry and business planned and progressed freely with minimum contact with agencies, bureaus, commissions, or alphabet groups."

DOUGLAS MACARTHUR
Chairman of the board, Remington Rand, Inc.

"The fact is unmistakable and clear that if the capitalistic system—free enterprise—is to be preserved to the future generations of our people, the course of government must now be sharply reoriented and America's industrial leadership must assume an invincible and uncompromising defense of that system."

WILLIAM P. WITHEROW
Former president, National Association of Manufacturers.

"The day is past when leaders in industry can be neutral or remain silent when the welfare of the nation, its economy, and its principles are in jeopardy. They must stand up and be counted for the things they represent. They must be vigorous in defense of their principles. They must be uncompromising in their willingness to act upon their beliefs."

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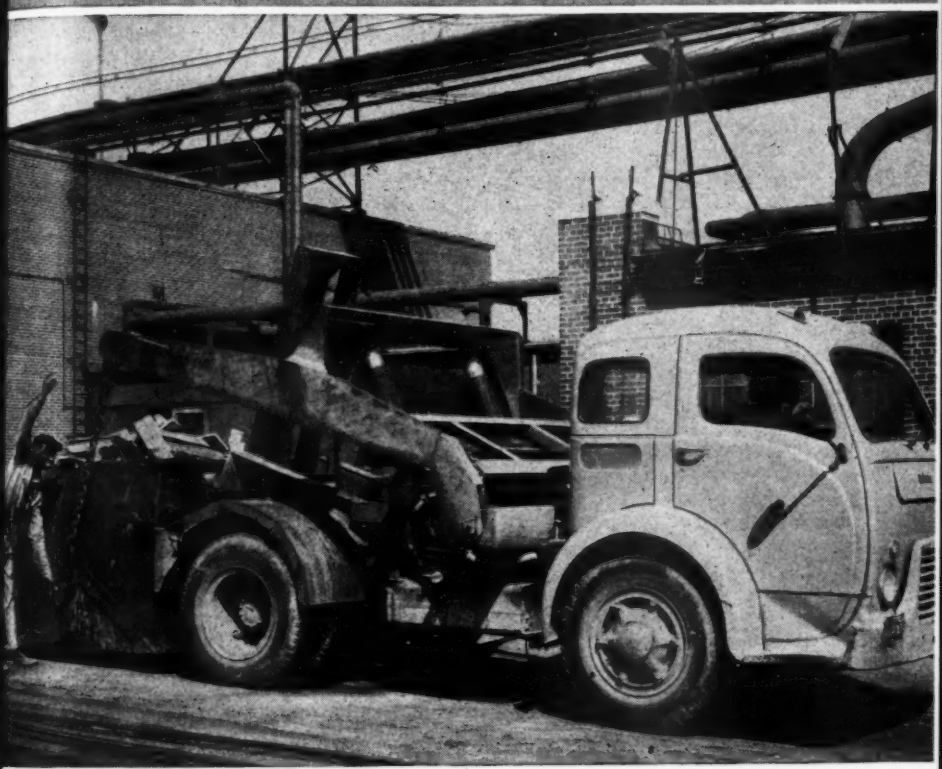

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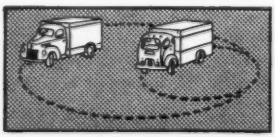
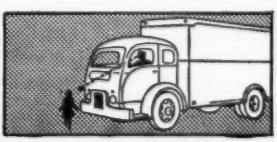
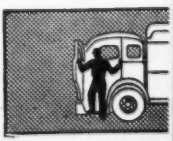


SAVES MANEUVERING TIME



NEW SAFETY FEATURES



BIG CAB SAVES S

ERNEST R. BREECH
Executive vice president, Ford Motor Company.

"The quality of free world business leadership in the next decade, especially in Europe, may largely determine whether our Allies take the high road to modern, twentieth century Capitalism, or the low road to increasing statism and Socialism."

SINCLAIR WEEKS
Secretary of Commerce.

"Many of the best in politics, agriculture, labor, education, military, and other fields are joining the Eisenhower team or supporting it. But already some pundits and tub-thumpers are sneering because the President has recalled to public service the 20-year 'forgotten man'—the businessman."

LEWIS W. DOUGLAS
Former Ambassador to Great Britain.

"Today there is no more important problem than that of protecting the purchasing power of the dollar; not even that of defending democracy. If the battle of the dollar is lost, democracy will scarcely survive. The fiscal policy followed by the Federal government will always be the most important factor in a fight against inflation, and will influence and condition all other anti-inflation measures which may be taken."

EDITORIAL STATEMENT
The Saturday Evening Post.

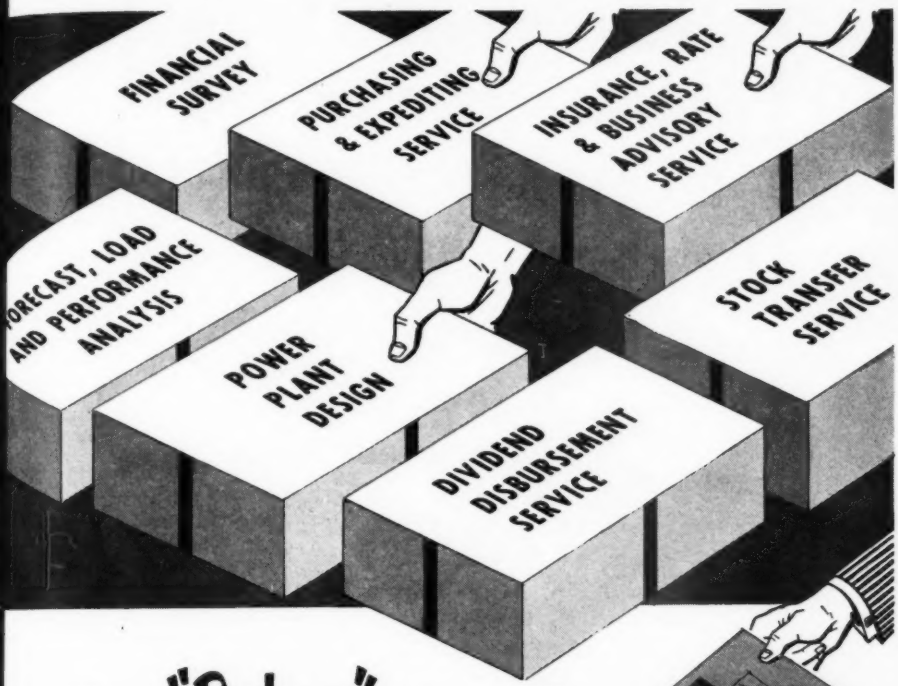
"Perhaps a job for the new Republican administration could be the creation of a Commission for the Survey of Semantics. There is much which such a body might investigate. For example, why is it 'reactionary' to favor a free market, and 'progressive' to plumb for price control? What is 'liberal' about a bureaucratic operation of the electric power companies, as opposed to the 'Tory' theory that private companies have done pretty well in that field?"

EARL BUNTING
Managing director, National Association of Manufacturers.

"Severe government restriction, or major government operations in competition with business, will be the certain means of destroying the recognized agent of progress. Business, therefore, in facing up to the responsibilities involved in the problems created by its own healthy growth, has no other alternative but to lead—or to be relegated to oblivion in a socialist state. Self-interest dictates the highest order of industrial statesmanship in working out solutions in the public interest."

FRANCIS CHERRY
Governor of Arkansas.

"The phrase 'states' rights' has been kicked around quite a lot in recent years, but any student of government and history knows that a proper respect by the three branches of our national government of what I prefer to refer to as the right of local self-government is a prime necessity to the continued functioning of our democratic processes. This is so fundamental that it hardly needs amplification, yet in recent years the trend toward centralization of power in our national government stirs deep fear in the hearts of honest statesmen."



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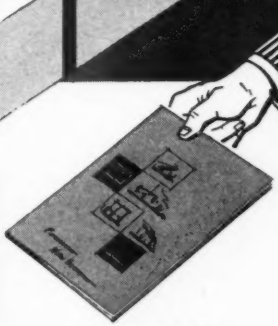

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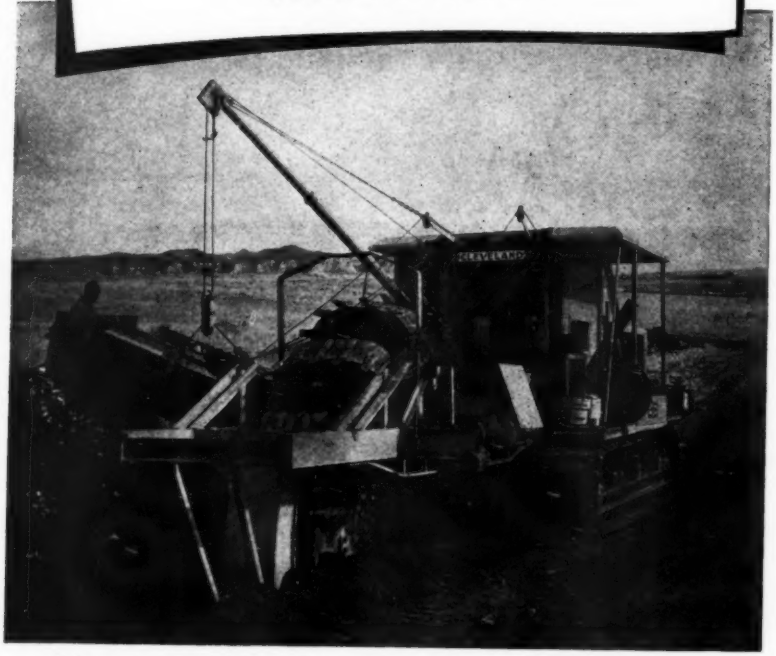

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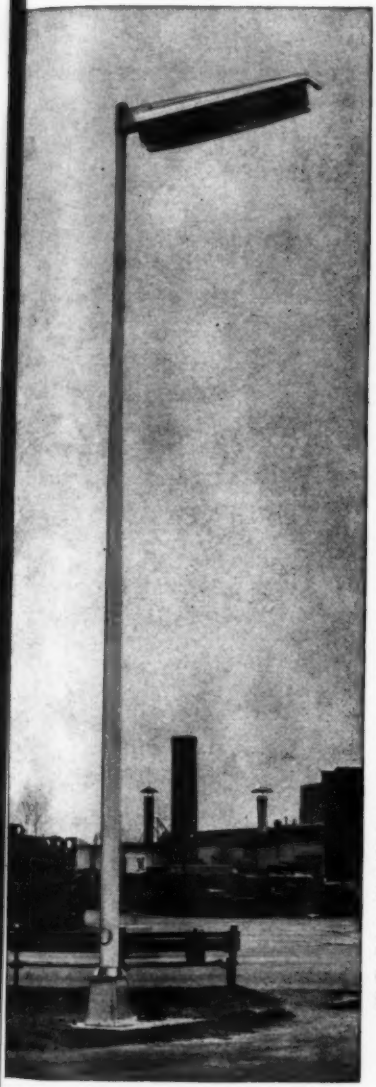
March 18, 1953.

New General Electric Fluorescent Luminaire Introduces A Brighter, Broader Light Pattern



FORM 206 LUMINAIRE is shown mounted on G-E aluminum pole. The modern design adds beauty to the streets of any city.

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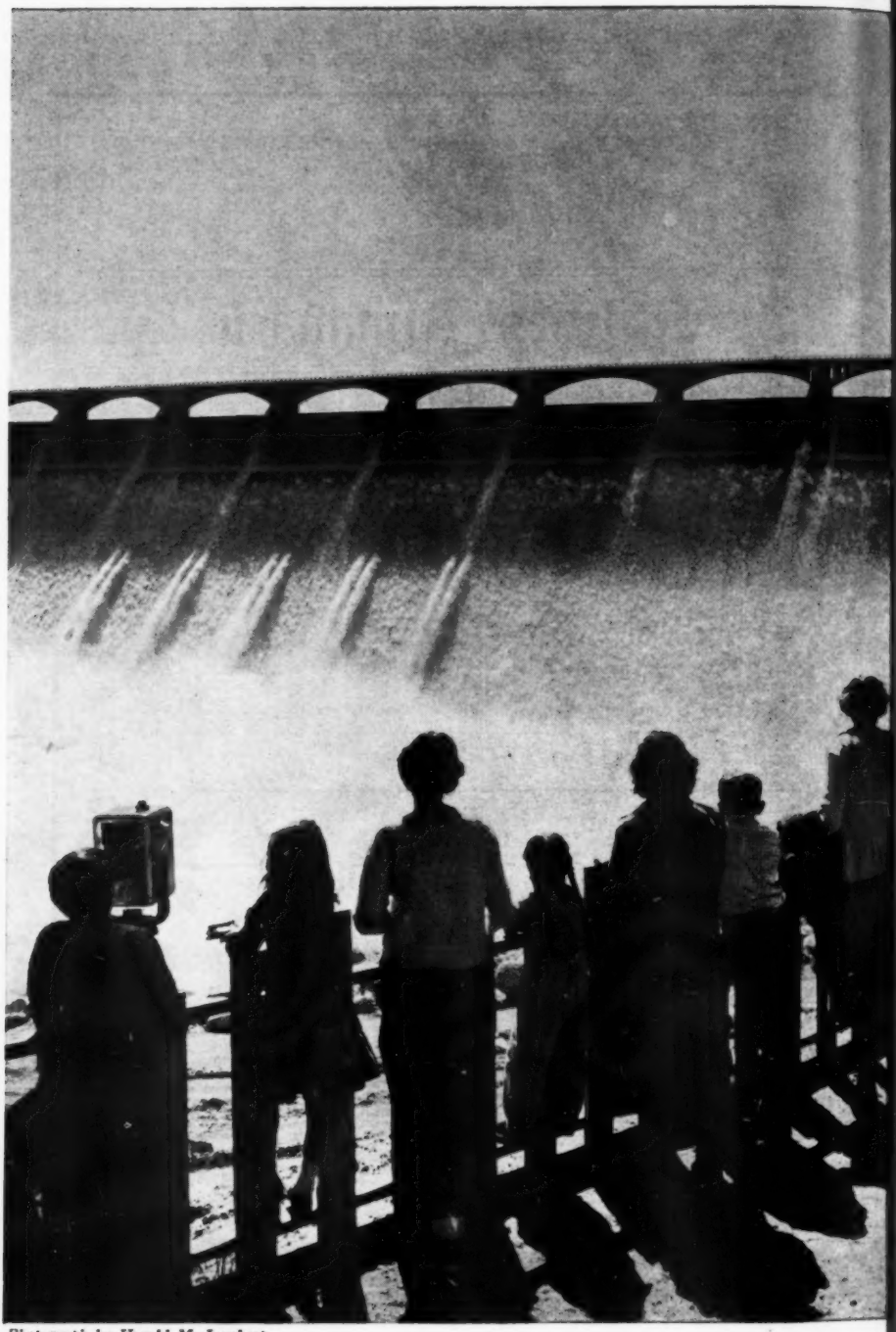
Utilities Almanack

March

26	Th	¶ *New England Gas Association begins annual meeting, Boston, Mass., 1953.* ¶ *Oklahoma Utilities Association begins convention, Tulsa, Okla., 1953.*
27	F	¶ *American Society of Metals ends 5-day western metals congress and exposition, Los Angeles, Cal., 1953.*
28	Sa	¶ *Alabama Broadcasters Association ends 3-day annual spring meeting, Florence, Ala., 1953.*
29	S	¶ *Illuminating Engineering Society will hold southwestern regional meeting, Dallas, Tex., Apr. 12–14, 1953.*
30	M	¶ *Indiana Liquefied Petroleum Gas Asso. begins convention, Indianapolis, 1953.* ¶ *Mid-West Gas Association begins convention, Colorado Springs, Colo., 1953.*
31	Tu	¶ *American Gas Association will hold sales conference on industrial and commercial gas, Philadelphia, Pa., Apr. 13–15, 1953.*

April

1	W	¶ *Illinois Liquefied Petroleum Gas Association begins spring convention, Springfield, Ill., 1953.*
2	Th	¶ *Edison Electric Institute ends 4-day annual sales conference, Chicago, Ill., 1953.*
3	F	¶ *Southeastern Electric Exchange, Engineering-Operation Section, will hold conference, Edgewater Park, Miss., Apr. 16, 17, 1953.*
4	Sa	¶ *American Water Works Association, Pacific Northwest Section, will hold annual meeting, Portland, Ore., Apr. 16–18, 1953.*
5	S	¶ *Maryland Utilities Association will hold annual meeting, Baltimore, Md., Apr. 17, 1953.*
6	M	¶ *American Water Works Association, Canadian Section, begins annual meeting, Buffalo, N. Y., 1953.*
7	Tu	¶ *Iowa Independent Telephone Association begins annual convention, Des Moines, Iowa, 1953.*
8	W	¶ *Missouri Valley Electric Association begins engineering conference, Kansas City, Mo., 1953.*



Photograph by Harold M. Lambert

Local Interest in Resource Development

Watching the main spillway at Grand Coulee dam.

Public Utilities
FORTNIGHTLY

VOL. LI, No. 7 MARCH 26, 1953

The Dominance of the Federal Government over the States

Since taking office, President Eisenhower has given special consideration to the problem of checking the tendency of the Federal government to dominate state and local economy, as well as political operations. Nowhere has this drift towards administrative absolutism become so apparent as in the field of public utility regulation and natural resource development. Whether in its rôle as umpire over interstate business-managed utilities, or as a constructor and operator of multipurpose dams and similar resource developments, Federal government VERSUS *"home rule" has become a persistent and increasingly irritating issue. In this article (see editor's note, page 400) one of the nation's leading jurists discusses the constitutional concepts and legal philosophy which should delineate the proper sphere of Federal government.*

BY THE HONORABLE ARTHUR T. VANDERBILT*
CHIEF JUSTICE, NEW JERSEY SUPREME COURT

THE overwhelming growth in size and power of the executive branch of the Federal government in comparison with the other two great departments has been the outstanding American political phenomenon of the twentieth century. To some extent this growth has been paralleled in the states. In so far as these movements parallel each other, they may be said to represent the inevitable result of government's assuming new functions in response to popular demands. The pattern is fairly uniform: The legislature passes a statute imposing obligations on the executive

*For additional personal note, see "Pages with the Editors."

branch in some new field; the statute requires uniformity of administration throughout the state or the nation as the case may be; such uniformity in turn necessitates an increase in the activity of the central government; and this increased activity of the central government calls for paid professional officials either replacing or supplementing local officials, often amateurs.

THIS centralization of responsibility also involves the delegation of legislative power to these professional officials, because the legislature cannot foresee every phase of the particular complicated social or economic problem under consideration; indeed, one great reason why the legislature often delegates legislative authority to the executive department is that it hopes the executive will be able to find through experiment and experience the solution that the legislature has not succeeded in discovering. Every such statute and every regulation promulgated thereunder inevitably impinges on the activities of the citizen and often on the functions of government, generally at the local level but also in the case of Federal statutes on the functions of state government. The process necessarily leads to a bureaucratic attitude in government. In an article on "The Limitations of the Expert," Harold J. Laski, who would never be considered a conservative, has described the characteristics of the bureaucratic mind:

> Special knowledge and the highly trained mind produce their own limitations which, in the realm of statesmanship, are of decisive importance. *Expertise*, it may be argued, sacrifices the insight of common sense to intensity of experience. It breeds an inability to accept new views from the very depth of its preoccupation with its own conclusions. It too often fails to see round its subject. It sees its results out of perspective by making them the center of relevance to which all other results must be related. Too often, also, it lacks humility; and this breeds in its possessors a failure in proportion which makes them fail to see the obvious which is before their very noses. It has, also, a certain caste spirit about it, so that experts tend to neglect all evidence which does not come from those who belong to their own ranks. Above all, perhaps, and this most urgently where human problems are concerned, the expert fails to see that every judgment he makes not purely factual in nature brings with it a scheme of values which has no special validity about it. He tends to confuse the importance of his facts with the importance of what he proposes to do about them.[1]

LASKI is here describing the genuine expert. We can only conjecture what he would have to say of the official with whom we are all familiar whose only claim to expertness inheres in the fact that he holds public office. Even with respect to the true expert Laski sounds a warning which every-

Editor's note: This article is based upon a portion of the lecture entitled "The Doctrine of the Separation of Powers and Its Present-day Significance" by the Honorable Arthur T. Vanderbilt, chief justice of the supreme court of New Jersey, a series of three lectures delivered at the University of Nebraska in the spring of 1952 as the second in the Roscoe Pound Lectureship series. The three lectures are: (1) "The Doctrine of the Separation of Powers Viewed Comparatively and Historically"; (2) "The Dominance of the Federal Government over the States and of the Federal Executive over the Legislative Branch As a Threat to the Doctrine and to Constitutional Government"; (3) "Judicial Deference As a Grave Cause of Constitutional Imbalance." Published by the University of Nebraska Press, Lincoln, Nebraska, 1952, 180 pages. Price, $2.50.

one interested in good government will do well to heed:

> We must ceaselessly remember that no body of experts is wise enough, or good enough, to be charged with the destiny of mankind. Just because they are experts, the whole of life is, for them, in constant danger of being sacrificed to a part; and they are saved from disaster only by the need of deference to the plain man's common sense.[2]

THE process we have been describing, of legislative enactment followed by administrative rule making, also involves investigation and adjudication by administrative officials, expert or otherwise. It is a process that has been repeated in scores of activities in every state and hundreds of times in the Federal government. The collective effect of this process brings us face to face with one of the fundamental problems of government, which has never been better expressed than by a young French judge who visited America a century ago to study its institutions and found much to admire. Says Alexis de Tocqueville in his *Democracy in America:*

> Certain interests are common to all parts of a nation, such as the enactment of its general laws and the maintenance of its foreign relations. Other interests are peculiar to certain parts of the nation, such, for instance, as the business of the several townships. When the power that directs the former or general interests is concentrated in one place or in the same persons, it constitutes a centralized government. To concentrate in like manner in one place the direction of the latter or local interests, constitutes what may be termed a centralized administration.
>
> . . . I cannot conceive that a nation can live and prosper without a powerful centralization of government. But I am of the opinion that a centralized administration is fit only to enervate the nations in which it exists, by incessantly diminishing their local spirit. Although such an administration can bring together at a given moment, on a given point, all the disposable resources of a people, it injures the renewal of those resources. It may ensure a victory in the hour of strife, but it gradually relaxes the sinews of strength. It may help admirably the transient greatness of a man, but not the durable prosperity of a nation.[3]

OF the soundness of his reasoning then and now there can be no doubt. The problem is difficult, but it is not beyond solution. For example, in a modern judicial department five, seven, or nine judges set the rules for the entire judiciary of a state or of the nation with but a minimum of interference in the individual judge's actual conduct of the mass of litigation. Can-

¶ "THE *overwhelming growth in size and power of the executive branch of the Federal government in comparison with the other two great departments has been the outstanding American political phenomenon of the twentieth century. To some extent this growth has been paralleled in the states. In so far as these movements parallel each other, they may be said to represent the inevitable result of government's assuming new functions in response to popular demands.*"

not similar techniques be developed in the administrative field? May not many of the new tasks of government be performed at the local level by local officials? To the extent that this can be done, is it not obviously preferable to a centralized administration in either state or nation?

IN the Federal sphere, however, extraordinary forces have been working toward a far greater concentration of power in the executive branch than we find in the states. The nation-wide depression of the 1930's called for nation-wide remedies. War can be waged only on a national basis and we have had three in less than half a century. As a result of these wars world leadership in international affairs has been thrust on us and it, too, can be carried on only on a national basis. And the financial burden that such leadership has come to entail in the topsy-turvy world can be met only on a national basis.

But there are still many functions that the Federal government has taken over, or desires to take over from the state or local government, either outright or through control by grants-in-aid, that could be exercised equally well or better by state or local governments had they the funds available —funds that now flow in a never-ceasing stream into the Federal Treasury by virtue of the Sixteenth Amendment and are largely expended under the "general welfare" clause without any judicial decision available on the propriety of such expenditures by reason of the unwillingness of the Supreme Court to pass on what is or is not in the general welfare.[4] So long as this situation continues and a great variety of legislation goes unchallenged because there is none with standing to challenge it, little can be done to return the Federal government to its proper bounds and to restore that balance in government which the Constitution intended.[5]

IT would be wearisome to catalogue, item by item, the ever-increasing scope of the activities of the executive branch of government, state and Federal, but the growth is reflected in the increase in public employment. In 1900 one out of every twenty-four workers was on a government payroll; in 1920, two years after World War I, one out of fifteen; in 1947, two years after World War II, one out of eleven; and today one out of nine.[6] The Federal government alone, according to the latest available summary, has 1,816 component parts divided into 9 departments, 104 bureaus, 12 sections, 108 services, 51 branches, 460 offices, 631 divisions, 19 administrations, 6 agencies, 16 areas, 40 boards, 6 commands, 20 commissions, 19 corporations, 5 groups, 10 headquarters, 20 units, 3 authorities, and 263 miscellaneous functionally designated parts.[7] Its growth in recent years can best be indicated by a few apt comparisons. In the ten years from 1940 to 1950 the number of Federal civilian employees increased over 100 per cent,[8] while the number of persons employed by all the state and local governments increased only 25 per cent. On January 1, 1952, the Federal government employed 2,500,000 civilians, and their number is currently growing at the rate of over 500 a day.[9]

It does not require much imagination to appreciate the economic, politi-

Federal and Local Governments Switch Positions

"IN whatever direction we turn we find the Federal government dwarfing state and local governments. For example, in 1930 the total revenue of all state and local governments was almost double the revenue of the Federal government, but by 1950 the situation was completely reversed with the Federal receipts more than double those of the state and local governments combined."

cal, and social effects of such mass governmental employment. The situation is the same in the armed forces. On VE-Day with over 12,000,000 men in uniform there were 397 Generals and Admirals in Washington; as of the end of last September with only 3,500,000 men in uniform—less than one-third of the number available on VE-Day—there were 361 Generals and Admirals in Washington. Said one Senate committee, "Unless this trend is halted we could wind up with the fighting forces composed of all chiefs and no Indians."[10] Speaking of Indians, there is one bureaucrat on the payroll of the Indian Affairs Bureau for every thirty Indians in the United States.[11]

IN whatever direction we turn we find the Federal government dwarfing state and local governments. For example, in 1930 the total revenue of all state and local governments was almost double the revenue of the Federal government, but by 1950 the situation was completely reversed with the Federal receipts more than double those of the state and local governments combined.[12] Governmental expenditures tell a similar story. In 1915, 53 per cent of the total expenditures for government was made at the local level, 19 per cent by the states, and only 28 per cent by the Federal government. By 1940 the expenditures of the Federal government exceeded the combined expenditures of all state and local governments and by 1949 Federal expenditures amounted to about 70 per cent of the total, with only 15 per cent being spent at the state and local levels, respectively.[13] Expressed in dollars, Federal expenditures, excluding debt retirement, increased from $730,000,000 in 1915 to almost $40 billion in 1949 or over fiftyfold.

But the 1949 figures now seem relatively small, for it was estimated that during the fiscal year 1952 the Federal government would spend almost $72 billion and in 1953 over $85 billion.[14]

THE shift in Federal-state relations revealed by these figures is further complicated by the fact that for years, both in time of war and of peace, the Federal government has been spending far more than it has received with the result that the Federal budget has been balanced only three of the past twenty-one years and the Federal debt has grown to towering proportions, standing today at $260 billion, compared with a mere $1,263,000,000 in 1900. The burden which the interest on our present national debt—not to mention its repayment—imposes on future generations is manifest; its inflationary tendencies are equally apparent. Even more ominous than the mounting national debt is the dwindling of our natural resources, resulting largely from over a decade of war and preparation for war.

No government, no matter how well organized, is capable of operating efficiently on such a gigantic scale, and the bipartisan Hoover Commission has conclusively demonstrated that our Federal government is neither well organized nor efficient.

ONE of the most ominous developments with respect to Federal spending and the encroachment of the Federal government on the activities of the states is the program of grants-in-aid carried out under the "general welfare" clause of the Constitution. Since 1934 payments by Federal agencies to state and local governments have risen from $126,000,000 to over $2,250,000,000 annually, an increase of over 1,700 per cent.[15] We seem to forget that the tax dollars which journey to Washington, if they ever return, come back depleted in numbers and burdened by conditions calling for the raising by state or local taxation of funds to match the grants-in-aid. Few, indeed, are the states or localities that have the wisdom and the courage to withstand being thus lured into spending for projects they cannot afford either initially to construct or later to maintain.

WHEN we turn in another direction —to the land—we find that the Federal government is this nation's biggest landowner. Its holdings of real estate are staggering. In 1943 it owned or was in the process of acquiring 383,600,533 acres—an area equal to one-fifth of the entire United States or to the combined area of 21 eastern states.[16] One might have expected the government to have reduced its land holdings following World War II, but just the opposite is true, for by 1949 it had increased its holdings by another 71,546,193 acres—an area roughly one and a half times that of the state of Nebraska. Nor is the Federal government's appetite for land satisfied; the battle is on between the states and the Federal government with respect to the so-called "tidelands." The stake is the ultimate control of all submerged lands—an area exceeding that of the six New England states with New York, New Jersey, Delaware, and Maryland thrown in.

But what should concern us most about the Federal government is its phalanxed strength. The railroads,

for example, are subject to the direct supervision of four Federal administrative agencies—the Interstate Commerce Commission, the Railroad Retirement Board, the National Mediation Board, and the Wage-Hour Division of the Labor Department—and the indirect regulation of five others—the Securities and Exchange Commission, the Internal Revenue Bureau, the Department of Defense, the Bureau of Public Roads of the Commerce Department, and the General Accounting Office.

Viewed from every angle, it would seem obvious that we need to reflect and then to act on the wisdom of de Tocqueville. Many of the functions now exercised by the Federal government are unquestionably national in scope, but many more are not. Many of these functions can be as well or better exercised by state or local governments.

THE first great step in overcoming our national political imbalance is to return to the state and local governments that which is truly theirs and to free their functions from the influence of grants by the Federal government. This could be done either by legislation, by judicial decision, or conceivably by constitutional revision. A Federal system necessarily involves checks on the interference of the central government with the states, just as the doctrine of the separation of powers involves checks on interference in the work of the three departments of the central government. If the Congress or the courts ignore the enforcement of these checks, they do so at the peril of the welfare of the nation.

PURSUANT to the Lodge-Brown Act of 1947 President Truman appointed a distinguished bipartisan commission of twelve with former President Herbert Hoover as chairman,[17] and the commission in turn was aided by 24 task forces composed of 300 outstanding citizens drawn from various walks of life. These task forces, assisted by full-time research staffs of the ablest specialists and consultants in the country, investigated every agency in the executive arm of government with the view to ascertaining the facts and making recommendations for modernizing the governmental processes. After two years of intensive work the commission and the task forces filed their reports.[18] It is claimed that the acceptance of the recommendations of these reports will effect an annual saving of from $3 billion to $5 billion.[19] The commission was not charged with the responsibility for examining into the question of

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whether any particular governmental service was essential, although much might have been said on that subject, but it was merely charged with the responsibility for recommending steps for improving the efficiency and economy in the functions of government they found in existence.

To strengthen the executive branch of the government and to restore efficiency to its operation, the Hoover Commission made numerous specific recommendations, centering around four principles, each requiring congressional endorsement: first, the granting of permanent powers for reorganization to the President; second, the removal of all restrictions on the organization of the office of the President; third, the enlarging of the authority of department and agency heads so as to permit them to select their subordinates and assign departmental functions to them and to allocate funds within their department; and, fourth, to inaugurate a broad program of reform aimed at improved management in the fields of personnel, budgets, accounting, and general administrative services and to regroup governmental functions by major purpose.

If these recommendations were to be followed the number of agencies reporting directly to the President would be reduced from 52 to 30 and the various activities of the Federal government, in order to eliminate waste, duplication, and confusion, would be organized in six comprehensive programs: (1) natural resources, (2) commerce and industry, (3) social welfare, (4) business enterprises, (5) foreign affairs, and (6) national defense. Lack of space precludes a further enumeration here of the specific recommendations put forward to accomplish these reforms, but it is to be noted that the National Citizens Committee for the Hoover Report under the chairmanship of President Robert L. Johnson of Temple University, announced that only 52 per cent of the recommendations of the commission have been adopted by Congress or the executive branch. Many of the basic recommendations which would effect the greatest economies still remain to be accepted.

Significant though the work of the Hoover Commission is, we must constantly keep in mind the fact previously mentioned, that it did not consider whether the functions of government it was studying were essential or, if essential, whether they should be retained in the Federal government or turned over to the state and local governments. Without such a study and action thereon the present imbalance of the Federal executive department in the national economy will continue and become even more aggravated. But there is another study that is equally important. What was needed after World War I and again after World War II and what will be needed after the present drive for rearmament is over is a special committee of the Congress charged with the duty of seeing to it that the individual freedom that is inevitably restricted in time of emergency is returned to the citizens uncurtailed after the emergency is over. The matter should also be a subject for the special attention of the bar, of our institutions of learning, and of the people generally.

Reversing the Trend of Centralization

"THE first great step in overcoming our national political imbalance is to return to the state and local governments that which is truly theirs and to free their functions from the influence of grants by the Federal government. This could be done either by legislation, by judicial decision, or conceivably by constitutional revision."

IN the ordinary processes of legislation, the last quarter of a century has witnessed a tremendous rise of presidential power in initiating legislation, in expediting its progress through the Congress, and in vetoing undesired legislation. Dr. Ernest S. Griffith, director of the Legislative Reference Service of the Library of Congress, estimates that fully 80 per cent of the important legislation of the first three years of the administration of President Franklin D. Roosevelt originated in the White House or in the executive departments.[20] The habit then formed has not disappeared, especially in fiscal and economic matters. In these fields the President has the great advantage of the technical skill and continuous services of the Bureau of the Budget and of the Council of Economic Advisers, which the Congress is not equipped to match though legislation in these fields is peculiarly its responsibility.

In effect, the President has acquired the powers of the English Prime Minister over the introduction of legislation without the correlative duties to the legislative branch imposed on the Prime Minister under the English practice. In expediting legislation through Congress the President has not only the prestige of party leadership, but also the power of patronage resulting from his right to appoint a multitude of officials. Equally important is the presidential veto power, for as Dr. Griffith says: "Only under exceptional circumstances is the veto overridden. One reason is that certain members vote for a particular measure, knowing it will be vetoed." All of these legislative powers of the President are within the Constitution, but over the last quarter of a century they have served to exalt the place of the Chief Executive in the legislative process at the expense of the Congress.[21]

When we consider the aggregate amount of executive legislation, however, we are quickly impressed with the fact that the executive branch of the government, including here the administrative agencies, derives more power by delegation from Congress than it does from the Constitution itself. Delegated legislative power, despite the maxim *"Delegatus non potest delegari,"* is nothing new in our law. Delegation of legislative power to the political subdivisions of the states has long been deemed fundamental to the American constitutional system. The delegation of legislative power to the Federal executive has come more slowly and out of necessity. At first it was confined to permitting the President to pass on simple facts requiring no discretion,[22] then on more complicated facts requiring the exercise of discretion,[23] and then on still more complicated facts that he could arrive at only with expert administrative assistance.[24] The trend was irresistible. The greatest growth, however, in the delegation of legislative power by Congress is to be traced to the organization of the Interstate Commerce Commission in 1887[25] with its commingled legislative, investigatory, prosecuting, and adjudicating functions. The commission set the administrative pattern which has been so generally employed in both state and national governments.

As a result, to quote Elihu Root, speaking in 1916, "The old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight."[26] Yet illustrating the danger of prophecy, when the Congress undertook in the National Industrial Recovery Act of 1933 to give the President power to approve "codes of fair competition" for various industries, the Supreme Court disapproved the virtually unfettered nature of the grant and termed it "delegation running riot."[27] Standards of delegation must be set up, and while they may be vague, they cannot be so vague as not to furnish any guide to the administrator or the court, nor, it seems, must they cover too much ground. The alternative to the fixing of adequate standards is government by personal edict with its attendant uncertainties and excesses.

The Emergency Price Control Act resulted in what may well be the most dangerous decisions in so far as the existence of the doctrine of the separation of powers is concerned that were ever handed down by the Supreme Court.[28] Thus in Yakus *v.* United States it was held that no court except the Emergency Court of Appeals and, on appeal, the Supreme Court had jurisdiction or power to consider the validity of a price regulation and that therefore a defendant was precluded from setting up the invalidity of such a regulation as a defense to a criminal prosecution under the act.

This judicial approval of a legislative device to strip the courts of their power constitutes a continuing threat to the integrity, independence, and equality of the judicial branch of the government. The effect of limiting the exercise of judicial power, once conferred, was well summarized by Mr. Justice Rutledge in a dissent in which Mr. Justice Murphy joined:

> It is one thing for Congress to withhold jurisdiction. It is entirely an-

other to confer it and direct that it be exercised in a manner inconsistent with constitutional requirements or, what in some instances may be the same thing, without regard to them. Once it is held that Congress can require the courts criminally to enforce unconstitutional laws or statutes, including regulations, or to do so without regard to their validity, the way will have been found to circumvent the supreme law and, what is more, to make the courts parties to doing so. This Congress cannot do. . . . Whenever the judicial power is called into play, it is responsible directly to the fundamental law and no other authority can intervene to force or authorize the judicial body to disregard it. The problem therefore is not solely one of individual right or due process of law. It is equally one of the separation and independence of the powers of government and of the constitutional integrity of the judicial process, more especially in criminal trials.

ONE cannot read the act and the decisions upholding it without being reminded of a line in a statement of Miss Ellen Wilkinson, M. P., concurred in by Harold J. Laski and appended to the report of the English Committee on Ministers' Powers: "Nothing is so dangerous in a democracy as a safeguard which appears to be adequate but which is really a façade."[29]

What safeguards are there from executive legislation? Congress could equip itself with budgetary and economic staffs at least as efficient as those of the executive, and it surely has no greater duty. It could grant powers to the executive or an administrative agency on a temporary, trial basis and it could repeal old grants of authority when they were found to be unnecessary or unworkable. It could insist that all rules and regulations be laid before it in one form or another before they become effective, as in England where they receive the attention of the Scrutiny Committee aided by the counsel to the Speaker[30]; or it might require as in Connecticut that all regulations be examined by the attorney general and submitted to the next session of the legislature for review with public hearings before the appropriate committees.[31] Congress, of course, may conduct investigations, but investigations generally are undertaken and corrective legislation enacted only after a situation has become acute. But, whatever the means, it is essential for the maintenance of a proper balance between the executive and the legislative branches of the Federal government that Congress take positive action to strengthen itself against encroachments by the President.[32]

WHILE the procedure of the executive departments and of the administrative agencies in promulgating

¶ "IN *an age of personal government we need not despair of a rule of law—and so of liberty—if our legislators will but respect the essential wisdom of the doctrine of the separation of powers. As matters now stand the responsibilities of the Congress are as great in internal affairs as those of the President are in international relations.*"

delegated legislation has not caused as much general controversy as the administrative processes of adjudication, it is of equal practical importance, as experience with the Office of Price Administration and other wartime agencies has demonstrated. Before the report and studies of the Attorney General's Committee on Administrative Procedure were published in 1941,[33] the matter of administrative lawmaking was almost *terra incognita.*

THE majority and the minority of the Attorney General's committee differed on three basic propositions, the first of which was the desirability of a legislative statement of standards of fair procedure, the minority favoring it, the majority opposing.[34] After five years of investigation, analysis, and debate the Federal Administrative Procedure Act was unanimously passed by both houses of Congress in 1946.[35] It is designed to protect the individual citizen from the hazards of uncertain and slipshod administrative procedures resulting in unfair and arbitrary action, while at the same time seeking to preserve the flexibility, the resourcefulness, and progressiveness of the administrative agency at its best. It sets up standards of administrative procedure conforming to a considerable degree to the suggestion of the minority of the Attorney General's Committee on Administrative Procedure.[36] The act is comprehensive in scope and in terms applies to the executive and all administrative agencies, but exceptions are provided for as to certain types of functions.

Thus, for example, while there is no exemption under the act for the War and Navy departments as such, § 2(a) exempts courts-martial, military commissions, and military or naval authority exercised in the field in time of war or in occupied territory. Another typical exception is found in § 3 relating to public information, which is applicable, "Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency . . ." Unfortunately since the passage of the act about a score of exceptions have been written into it, but a bill to remove most of these added exceptions has passed the Senate and is now before the House.[37]

THE act marks the beginning of a new era in American administrative law in that Congress has at last recognized the importance, even though inadequately, of administrative procedures. While like all legislation it involves compromises, for the first time it sets forth the procedural principles on which Congress expects the administrative agencies to operate. It proceeds on the premise that the executive as well as the citizen should be subject to law.

Section 4 of the act gives new significance to administrative rule making, both from the standpoint of the administrative agency and of the individual citizen by providing that due notice of proposed rule making shall be published in the *Federal Register,* except where actual notice is given or where the agency for good cause finds —and incorporates the findings in the rules issued—that notice is "impracticable, unnecessary, or contrary to the public interest."

Rule making may be either informal

Bringing Administrative Government under Control

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or formal, depending on the requirements in the statute creating the agency in question. Formal rule making requires a hearing so as to make a record. Where the statute creating the agency requires such a hearing, any aggrieved party is given precisely the same rights in respect to a hearing and the decisions that would follow the hearing as would any litigant in a contested case before the agency. Unfortunately the Congress has thus far required a record in rule making in very few instances, though the procedure has been used in such important statutes as the Food, Drug, and Cosmetic Act and the Fair Labor Standards Act.

The pattern stands, however, for a procedure that Congress should investigate further. On informal rule making, after notice has been given, interested persons are given an opportunity to submit their data in writing and to present their arguments either in writing or orally as the agency may elect. After a consideration of all of the relevant data submitted the agency incorporates in the rules it adopts a "concise general statement of their basis and purposes." While informal rule making falls far short of the safeguards afforded by formal rule making, it nevertheless affords the citizen greater rights than he has in dealing with the Congress or state legislatures.

IN the field of administrative jurisdiction the greatest controversy has been over the commingling of investigating, prosecuting, and judicial functions in one man or one body of men. President Roosevelt's Committee on Administrative Management was strongly opposed to the practice:

> At the same time [as it executes its

other duties] the independent commission is obliged to carry on judicial functions under conditions which threaten the impartial performance of that judicial work. The discretionary work of the administrator is merged with that of the judge. Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from their subversive influences impossible.

Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct are under the suspicion of being rationalizations of the preliminary findings which the commission, in the rôle of prosecutor, presented to itself.

The independent commission, in short, provides the proper working conditions neither for administration nor adjudication. It fails to provide responsibility for the first; it does not provide complete independence for the second.[38]

THE minority of the Attorney General's committee was likewise opposed, citing the traditional division between prosecutor and trial court in ordinary criminal litigation and the Bureau of Internal Revenue and the Board of Tax Appeals, now the Tax Court, as outstanding examples of a successful division of functions between rule maker and prosecutor on the one hand and judge on the other. Another more recent but equally important example of complete separation of functions is to be found in the work of the National Labor Relations Board under the Taft-Hartley Act.[39]

IT may be necessary for an agency in its infancy to exercise all three powers in exploring the field of its activities, but as it reaches maturity its functions should be separated so as to eliminate the dangers inherent in omnipotency.

But the administrative agencies with commingled prosecuting and adjudicatory powers had seemingly become a tradition too strong for Congress to overcome in most instances. Congress in the Administrative Procedure Act decided against complete separation, but it did make an effort to provide some safeguards within the existing framework of the agency by internal separation. There must be notice given of hearings and of the issues involved and an opportunity to present facts, arguments, and offers of settlement. The hearing officer shall be independent of any officers engaged in investigative or prosecuting functions of the agency and shall not "consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate," and shall make the initial decision or a recommended decision. The power to make the initial decision is admirable, but the limitation of the hearing officer's power by the agency merely to recommending a decision for agency approval leaves much to be desired. Persons required to appear before an agency shall be entitled to have counsel and agency subpoenas and they shall be entitled to get copies of records.

No order shall be made "except upon consideration of the whole record . . . as supported by and in accordance with the reliable, probative, and substantial evidence"—a very real ad-

vance if properly construed by the courts.

Either prior to or after a decision by a hearing officer the parties shall be given an opportunity to submit findings, exceptions, and supporting reasons, and the record shall show the ruling on each. Though the act is a long step forward, the internal separation of prosecuting and adjudicatory functions in an agency inevitably falls short of giving the individual a protection to which he has been traditionally entitled in all justiciable controveries. One wonders, indeed, if the individual can ever be given adequate protection, human nature being what it is, when the prosecuting and adjudicatory functions are still subject to the control of the same agency heads.

SEAMS have appeared and, as in the case of the Federal Rules of Civil Procedure after a similar trial period, the act may later require a revision; but even with its defects it has gone far to achieve the goal asserted by Mr. Justice Brandeis, "In the development of our liberty, insistence upon procedural regularity has been a large factor."[40]

WITH respect to the organization and operation of the executive branch, the Congress has it entirely within its power through the acceptance of the recommendations of the Hoover Commission to cut substantially government expenses and to increase efficiency. By strengthening the Federal Administrative Procedure Act it can assure to the citizen the rule of law in administrative rule making and adjudication. Congress may also ameliorate the trend toward centralization due to the excessive vesting of power in the executive arm of the Federal government and it may return to the states the functions they can exercise more efficiently. It may at any time that it chooses reassert its power over the purse. It may adopt a new and truthful concept of the public welfare. In an age of personal government we need not despair of a rule of law—and so of liberty—if our legislators will but respect the essential wisdom of the doctrine of the separation of powers. As matters now stand the responsibilities of the Congress are as great in internal affairs as those of the President are in international relations.

Footnotes

[1] 162 *Harper's Magazine* 101, 102 (1950).
[2] *Id.*, 109.
[3] Vol. I, pages 86, 87 (Bradley ed., New York, 1946).
[4] Massachusetts *v.* Mellon, 262 US 447 (1923). See concurring opinion of Mr. Justice Brandeis in Ashwander *v.* Tennessee Valley Authority (1936) 297 US 288, 346-348.
[5] See Field, "Separation and Delegation of Powers," 41 *American Political Science Review* 1101, 1108 (1947).
[6] Fabricant, *The Rising Trend of Government Employment*, 5 (Nat. Bur. of Econ. Res., 1949); 38 Fed. Res. Bull. 438 (1952). The figures for 1900 and 1920 include persons in the armed forces, those for 1947 and 1949 do not.
[7] "Big Government: Can It Be Managed Efficiently?" *Fortune* magazine, special supplement 4 (May, 1949).
[8] Bureau of the Census, *Statistical Abstract of the U. S. 1951* 193, Table 222.
[9] Report on Personnel, Joint Committee on Reduction of Nonessential Federal Expenditures, 82nd Congress, 2nd Session, Senate Docket No. 101 (1952).
[10] Senate Preparedness Subcommittee Rep. (November, 1951).
[11] Report on Indian Affairs, The Commission on Organization of the Executive Branch of the Government, 59, 62 (March, 1949).
[12] *Information Please Almanac 1952*, 278.
[13] *Facts and Figures on Government Finance*

1950-1951, 54, Table 40 (Tax Foundation, Inc., 1950).

[14] Bureau of the Budget, *Budget of the U. S. for the Fiscal Year 1953*, A 5, Table 1.

[15] Additional Report on Federal Grants-in-aid to States, The Joint Committee on Reduction of Nonessential Federal Expenditures, 82nd Congress, 2nd Session, Senate Docket No. 101, Table I (1952).

[16] Additional Report on Federal Ownership of Real Estate, The Joint Committee on Reduction of Nonessential Federal Expenditures, 78th Congress, 1st Session, Senate Docket No. 130, page 1 (1943).

[17] The Commission on Organization of the Executive Branch of the Government is commonly referred to as the Hoover Commission. Other members of the commission were Secretary of State Dean Acheson, vice chairman; former Civil Service Commissioner Arthur S. Flemming; Secretary of Defense James V. Forrestal; Senator George D. Aiken of Vermont; former Ambassador to Great Britain, Joseph P. Kennedy; Senator John L. McClellan of Arkansas; Michigan professor of political science James K. Pollock; Representative Clarence J. Brown of Ohio; Representative Carter Wanasco of Alabama; and former Assistant to the President James H. Rowe, Jr.

[18] Nineteen reports were filed in all, the final report being submitted to the Congress on May 20, 1949.

[19] *Congressional Record*, page 7597 (June 18, 1952).

[20] Griffith, *Congress: Its Contemporary Rôle*, 65 (New York, 1951).

[21] See Corwin, *The President, Office and Powers, 1787-1948* (third edition, revised, New York, 1948); Hart, *The American Presidency in Action*, 1789 (New York, 1948).

[22] The Brig Aurora *v.* United States (1813) 11 US 382.

[23] Field *v.* Clark (1892) 143 US 649.

[24] J. W. Hampton, Jr. & Co. *v.* United States (1928) 276 US 394.

[25] Interstate Commerce Act, 24 Stat 383 (1887), as amended, 49 USC § 11 (1946).

[26] *Addresses on Government and Citizenship*, 534 (col. and ed. by Bacon and Scott, Cambridge, Massachusetts, 1916).

[27] Concurring opinion of Mr. Justice Cardozo in Schechter *v.* United States (1935) 205 US 495, at 553. See also Panama Refining Co. *v.* Ryan (1935) 293 US 388.

[28] Lockerty *v.* Phillips (1943) 319 US 182; Yakus *v.* United States (1944) 321 US 414; Bowles *v.* Willingham (1944) 321 US 503.

[29] Annex VI, page 138 of the report presented by the Lord High Chancellor to Parliament, April, 1932. (Published in London by H. M. Stationery Office, 1936.)

[30] Schwarts, *Law and the Executive in Britain*, 116 *et seq.* (New York, 1949).

[31] Conn Gen Stat (1949 Rev.) §§ 280-287. See also *Congressional Oversight of Administrative Agencies*, a report of the Committee on Administrative Law of the Association of the Bar of the City of New York, 5 *The Record* 11 (January, 1950).

[32] For a proposal that the President construct his Cabinet from a joint legislative council created by both houses of Congress, see Corwin, *The President, Office and Powers, 1787-1948*, 353-364 (third edition, revised, New York, 1948). See also Cheever and Haviland, *American Foreign Policy and the Separation of Powers*, 175 (Cambridge, Massachusetts, 1952).

[33] The report of the committee, appointed by the Attorney General in 1939 at the suggestion of the President, was submitted on January 22, 1941, and transmitted by the Attorney General to Congress on January 24, 1941 (U. S. Government Printing Office, Washington, D. C. 1941).

[34] See *Statements of Additional Views and Recommendations* of Messrs. McFarland, Stason, and Vanderbilt, *id.*, at page 203.

[35] 60 Stat 237 (1946), 5 USC § 1001 *et seq.* (1946).

[36] See report, *op. cit.*, *Appendix to Statement of Additional Views and Recommendations* page 217.

[37] S 1770 introduced by Senator McCarran passed the Senate October 11, 1951.

[38] Report on Administrative Management in the Government of the United States, January, 1937, at page 40 (U. S. Government Printing Office, Washington, D. C. 1937).

[39] National Labor Relations Act as amended by Labor Management Relations Act of 1947 (Taft-Hartley) §§ 6, 9, 10, 29 USC §§ 156, 159 (c) (d), 160 (Supp 1949).

[40] Dissenting opinion in Burdeau *v.* McDowell (1921) 256 US 465, at 477.

"THE principles that brought our nation to greatness transcend both time and condition, for they were developed with the objective of giving the widest possible scope to human accomplishment. So long as they are retained, they should serve the future as fruitfully as they served the past."

—CRAWFORD H. GREENEWALT,
President, E. I. du Pont de Nemours & Company.

Taking the Gamble Out of Pensions

In recent years, the inflationary spiral has placed all pensioners trying to live on a fixed income established during prewar price levels at decided economic disadvantage. What can be done now or in the future, or even retroactively, to "make whole" the faithful retired employee who sees his once valuable annuity dwindling in purchasing power to the point of bare subsistence?

By GEOFFREY N. CALVERT*

Of all American industries, none has done more to make the lives of its employees secure than has the public utility industry. One of the most important forms of future security which any industry can provide is the pension plan. The utility industry has a special interest in developments in the pension-planning field which will tend toward greater pension security for the wage earner, and a stabilized cost to the corporation.

During the past ten years practically every corporation with a pension plan and practically every one of its employees saw the devastating effect on pension planning of a severe inflation. But pension planning being relatively in its infancy as to most of our corporate enterprise, the impact of higher living costs on those retiring did not affect a large number of people, although this was small comfort to those pensioners who were adversely affected by price levels which had surged upward drastically.

In the light of these increased living costs, many pension plans of utilities which appeared to offer a decent standard of retirement living will no longer do so. And even if the plans were adjusted to recognize the inflation which has occurred to date, this would constitute no assurance of protection for the retiring employee in the distant future.

A pension is supposed to provide security and a safe income in old age. It seems strange to talk of it being a gamble. But, believe it or not, that's what practically every pension is. We don't mean there's doubt that the pensions will be paid—

*For personal note, see "Pages with the Editors."

in dollars. But there's a very grave doubt as to how much those dollars will buy. It's almost a certainty they won't buy just as much as they will now. And history—for hundreds of years—seems to indicate the chances are strong that dollars received twenty or thirty years hence won't buy as much as they will now. Therein is the gamble—a gamble on the future cost of living.

There are about 17,000 pension plans in existence in America. Probably 15,000,000 Americans are either receiving pension payments or will be when they reach retirement age. Including their families, perhaps 50,000,000 people, or about one-third of our population, are directly interested in private pension plans. That's a big segment of the American population. How much these pensions will buy is a big question, and needs a big answer. America is becoming increasingly pension conscious, and increasingly pension-inflation conscious.

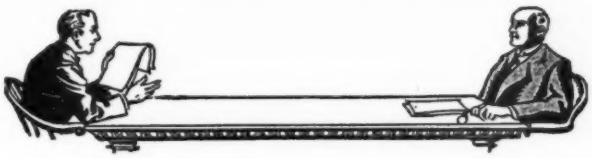
LET's consider what the retiring person really wants from his pension. What he really wants is an assurance that for the rest of his natural life he will be able to have so many steaks, potatoes, and bottles of milk a week, a new suit every so often, a house or apartment of a certain size, type, and location, and so on. What he really wants is the assurance that he can get a certain quantity and quality of things which he will need if he is to live at a certain standard of decency and comfort after his retirement.

Will his present pension plan assure him of this? In most cases, no. Unfortunately, the economic history of the past gives every indication that the present pension commitments *won't* assure him of the kind of living standard he has in mind. True, the pensions will assure him of a fixed number of dollars every month, but who can assure him of what those dollars will buy? That is the gamble. It may be the greatest gamble in our economy.

Of course, the gamble would work to the pensioner's advantage, if prices went down. But most people don't want to take that kind of gamble because it's a gamble with the odds against them. Pensions shouldn't involve that kind of a gamble. Pensions should and must be safer than that.

WHAT does the utility corporation want in setting up its pension plan? It wants to assure its employees of such a decent standard of living, regardless of living costs, and, at the same time, it wants assurance itself that this future living standard can be accomplished without the corporation assuming dangerous obligations. It wants to be assured of its own maximum obligations under the plan and, also, that these obligations have a reasonable probability of meeting the retiring employee's requirements as to living standard, come what may as to price levels. The corporation cannot afford to embark on obligations under pension plans which may endanger its earning power, its credit, or its financial stability.

What the employee needs in a pension, as is generally recognized today, is a certain percentage of his salary shortly before retirement. The pension, to be truly meaningful and sufficient, must be geared to his pay over the period immediately before retirement and not to his average wages



How Secure Is Pension Security?

"MUCH of America is interested in pensions in one way or another, but few realize that the security to which they look forward after their pensions commence may be illusory, that the standard of living they now look forward to may be drastically reduced—in short, that their pensions are a gamble."

over the period of his employment until retirement. Under some plans, the pensions are geared in this manner, usually to the average pay for five years before the retirement date. If earnings throughout the corporation are maintained at relatively stable levels for various positions and duties, such an obligation may not create an unreasonable burden, but should price levels, and consequently wage levels, change drastically, it might well throw a serious burden on the corporation.

If price and wage levels should increase 100 per cent in any 5-year period the annual pension obligations of the corporation would increase by a still greater percentage, because it would be necessary to make up the deficiency in contributions made in the past.

WHILE utilities generally have a lower percentage pension cost in relation to net income than enterprises with less capital and more labor, nevertheless a normal pension cost of 6 or 7 per cent (after income taxes) of the balance of earnings for common stock would not be an unreasonable average figure and this might, under the pressure of inflation, increase to an amount sufficient to materially affect the value of the equity, even though it might not seriously impair the company's credit. Utilities are under the disadvantage that they cannot, as industrial corporations often can, offset this additional cost by increasing the price of their products, with the result that in most cases utilities would have to carry this burden by diminution of stockholders' earnings and surplus.

A NEW fundamental concept of the workings of pension funds has recently been developed which should go far to alleviate the dangers and disadvantages inherent in the present type of pensions.

The new plan is to invest a portion of the pension fund in common stocks of American corporations representing a cross section of the nation's industry. This in itself is not new, as a part of present pension funds has

been and is being so invested. The novel part of the plan is that the pension itself will consist partly of fixed dollars and partly of these shares of stock. To illustrate, let us take a case where a pension of $200 per month is payable at retirement, under a present pension plan. The pension fund is invested in fixed-dollar obligations and the dollar amount of the pension is to be a fixed sum. Now let us imagine the plan is changed so that half of the contributions will be invested in fixed-dollar obligations. That will produce $100 of pension. The other half will be invested in a diversified list of representative high-quality stocks.

At retirement this would provide a certain number of shares. Those shares would be divided into as many pieces or units as there are years of average life expectancy from retirement age. Let us say that was fifteen years; *i.e.*, from sixty-five to eighty. In that case the stock would be divided into fifteen equal units. One unit would then be sold in the market each year, and the proceeds of the sale would be paid to the retired person along with the fixed-dollar part of the pension. The proceeds from the shares might amount to $120 (making a total pension of $220), or to $150 (making a total pension of $250) or, if the market were lower than when the stock was purchased (on the average), the stock portion might be only $80 (making a total of $180). But, you may say, that in itself is a gamble, since the pension will fluctuate.

UNLESS further steps are taken, in designing the new plan, to control these fluctuations, it is true that the amounts paid under this plan will fluctuate. However, the amount of pension will tend, over a period, to follow pretty closely the changes in the cost of living so that a substantial part of the gamble on living costs would be eliminated. If you get $120 from the stock portion of the new plan, in a given month, you would probably need it to buy what $100 would have bought in previous years. On the other hand, if the stock part of the pension brings you only $80, the chances will be that you can get for that amount about the same things which cost $100 at an earlier date. The number of dollars you receive might go up or down, but the things you could buy with them would be likely to remain relatively equal.

This new fundamental concept in pensions is already embodied in existing pension plans. In December, 1951, Teachers Annuity and Insurance Association (whose pension plan covers most of the faculty and employees of the great majority of American colleges) announced that it would supplement its pension plan to make the equity-unit pension concept available to members of its plan on an optional basis, and this change has now become effective. Other plans utilizing this same principle have also been established.

AMONG leading firms of pension consultants known to favor the establishment of plans on this principle, the consulting actuarial division of Alexander & Alexander, Inc., of New York (and other large cities) is busy developing modifications and improvements designed to keep the pension payments even closer to the cost-of-living index.

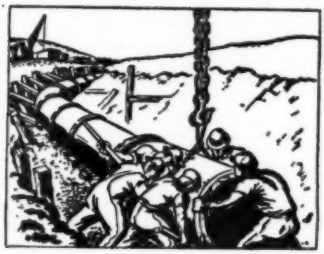
It is believed that the new formula will be widely adopted by American corporations which presently have pension plans, or are to have them as soon as its merits have been brought to their attention. It offers protection to employees against fluctuations in purchasing power, and, on the other hand, protects employers against the possible economic dangers inherent in committing themselves for pensions on the basis of earnings in effect shortly before retirement, which may be drastically increased by inflationary conditions then existing. Both the inherent growth tendencies in common stocks and their substantially higher income (the excess of rate of return on stock investments over the rate of interest on high-grade bonds) should tend to increase the amounts of pension.

MUCH of America is interested in pensions in one way or another, but few realize that the security to which they look forward after their pensions commence may be illusory, that the standard of living they now look forward to may be drastically reduced—in short, that their pensions are a gamble. However, initiative and research have apparently found a way out of the dilemma. The adoption of the new principle of equity-unit pension payments should give us a large measure of the pension security that is so badly needed—security that no matter how prices fluctuate we can expect with an increased measure of assurance that our pensions will enable us to live on the standard we anticipated.

If the new plan has the merits claimed for it — and so it seems —that is glad tidings, indeed, for millions of Americans.

This is good news, too, for American corporations with pension plans or about to adopt them, and particularly for American utilities, which have long endeavored to maintain a high standard of security for the employees of this industry, both in their jobs during their working years and in their pensions after retirement. The new plan should prove a boon to the utility industry for it should enable it to obtain a higher degree of security for its employees without increasing its own obligations or becoming party to dangerous speculations with future price levels, to say nothing of the fact that the increase in income from the portion of the pension funds invested in common stock equities, should, alone, increase the amount of dollar pension payments without added cost to the employing corporation.

THE principles described above can be employed in setting up a new plan or in adjustment or amendment of an existing plan. In contributory plans it can be limited to all or a portion of the fund arising from the employer's contributions. It can be added as an additional employer contribution or the present employer contributions can be applied in whole or in part to the purchase of the common stock equities, thereby increasing dollar pensions and at the same time providing security for the employees against dollar purchasing power fluctuations commensurate with the portion of the fund invested in the equities.



Impact of FPC Rate Regulation On Natural Gas Production

The economic consequences of the commission's treatment of natural gas production properties has a direct impact upon consumers. As a result of restricted regulation, have pipeline companies been driven out of the production business, preferring an arm's-length supply instead of an economic penalty for developing their own reserves?

By EDWARD FALCK*

ONE of the most significant economic facts concerning the natural gas industry during the past decade has been the remarkable decrease in the price fixed for natural gas during a period when the prices of coal and oil advanced sharply and practically doubled. According to the "Consumer's Price Index" published by the Department of Labor, the cost of living in 1951 was 85.6 per cent higher than the average of the years 1935-39. The items of domestic fuels entering into this "Consumer's Price Index" increased or decreased during the same period as follows:

Natural Gas		
Cooking and Miscellaneous Uses (10.6 Therms)	Decreased	18.1%
House Heating (30.6 Therms)	Decreased	15.8%
Bituminous Coal	Increased	104.6%
Pennsylvania Anthracite	Increased	114.9%
Kerosene Range Oil	Increased	81.7%
#2 Fuel Oil (House Heating)	Increased	91.0%

Partly as a result of the changes in the relative prices of these fuels there has been a tremendous growth in the marketed production of natural gas during recent years, both in absolute terms and in percentage of total energy supplied by all mineral fuels. Thus, expressed in trillions of British thermal units, natural gas production increased from 2,860 in 1940 to about 8,708 in 1952, an increase of 204 per cent, as contrasted with the total for all mineral fuels which increased from 24,336 in 1940 to 37,195, an increase of only 52.8 per cent.

*For personal note, see "Pages with the Editors."

In terms of the percentage of total British thermal unit equivalent contributed by the several mineral fuels and water power in the United States, natural gas increased from 11.3 per cent in 1940 to 22.5 per cent in 1952. (It should be noted that these percentages are based upon preliminary Bureau of Mines data for the year 1952.)

During most of this period the transportation of natural gas in interstate commerce has been subject to the jurisdiction of the Federal Power Commission. Consequently, the regulatory policies of the FPC have been and are of the greatest importance to the development of the natural gas industry. One of the most important and interesting issues of regulatory policy has been the accounting and rate treatment accorded to gas reserves owned by natural gas companies. This matter was covered at some length in the Natural Gas Investigation, Docket G-580, and in congressional hearings held on the Moore-Rizley Bill in 1947 and on the Kerr Bill in 1949. At the time of the natural gas investigation, the commission was sharply divided on the question as to how natural gas reserves should be treated in rate cases.

Until now, the Federal Power Commission's practice in rate cases—as determined by the majority of the commission—has been to allow the entire price paid by the pipeline company as a cost to be included in the determination of rates where gas is being purchased from producers and gatherers under arm's-length contracts. However, where the natural gas is produced by the regulated natural gas company itself, the Federal Power Commission includes the depreciated net investment in gas reserves together with the net investment in transmission property and permits the company to earn a stated annual return on the total amount of this investment. In other words, the pipeline company owning its own reserves is held to the low utility rate of return based upon cost of the reserves, but independents who have an equally low cost are permitted to charge the going competitive field price.

The average field price of natural gas in the major producing areas in the Southwest is substantially higher than the cost that the Federal Power Commission allows to natural gas companies for the production of their own gas. This is not only true as of today but it was true as far back as 1946 when the issue of the FPC's policy on gas production was being investigated and debated. A few examples of the differentials existing in 1946 will show this to be the case.

Data presented in the Smith-Wimberly report in the natural gas investigation showed that for companies such as Colorado Interstate Gas, Cities Service Gas, Natural Gas Pipeline Company, Northern Natural Gas Company, etc., the cost of gas produced directly or by affiliated companies was anywhere from one-half to one-third of the average price of gas being purchased by gas companies from nonaffiliated producers. Today, the differential between cost of production allowed by FPC to companies owning their own production and average field prices is much greater. For example, in a recent hearing in the Panhandle Eastern Pipe Line Company rate case before the Federal Power Commission, G-1116, Panhan-

dle Eastern's expert witness, Charles Hinton, testified that the weighted average prices of gas (wellhead) as of August, 1952, were 8.48 cents per MCF in Kansas, 11 cents in Oklahoma, and 7 cents in Texas. These prices are stated on a pressure base of 16.4 pounds per square inch.

In the same hearing exhibits were introduced showing that stockholders of Panhandle Eastern received a negative net income—*i.e.*, an actual loss—on company-produced gas. Thus, a comparison of net income from gas wells owned 50 per cent by Panhandle Eastern Pipe Line Company (FPC-regulated basis) and 50 per cent by others (nonregulated basis) showed that the nonregulated partner received net income per MCF ranging from 4.9 cents to 5.6 cents, whereas the net income of the regulated producer (Panhandle Eastern) ranged from a loss of 0.8 cents to 1.3 cents per MCF. (See C. H. Hinton's

GAS PRODUCED AS PER CENT OF GAS PRODUCED AND PURCHASED FOR MAJOR NATURAL GAS PIPELINE COMPANIES

1942-1951

Company	1951 %	1950 %	1949 %	1948 %	1947 %	1946 %	1945 %	1944 %	1942 %
1. I. *Companies Operating in 1942*									
2. Arkansas Louisiana Gas Co.	32.8	35.1	31.1	36.2	38.2	34.7	35.2	35.1	61.3
3. Cities Service Gas Co.	30.1	29.9	35.1	37.8	43.7	51.4	64.2	54.2	38.4
4. Colorado Interstate Gas Co.[1]	73.0	75.7	73.1	83.1	96.2	100.0	100.0	100.0	100.0
5. El Paso Natural Gas Co.	3.6	0.3	0.4	0.0	2.5	3.4	8.6	12.3	0.0
6. Interstate Natural Gas Co., Inc.	34.0	33.3	36.8	41.4	52.4	61.3	64.5	69.1	57.0
7. Lone Star Gas Co.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	11.7
8. Mississippi River Fuel Corp.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
9. Natural Gas Pipeline Co. of America[2]	48.2	50.0	51.8	71.3	74.9	74.7	75.7	76.0	75.3
10. Northern Natural Gas Co.	19.8	18.7	19.7	16.9	22.2	18.0	16.9	17.1	14.0
11. Panhandle Eastern Pipe Line Co.[3]	30.6	32.1	32.4	30.1	30.3	32.5	39.7	44.3	52.4
12. Southern Natural Gas Co.	7.6	7.6	3.6	0.0	0.5	0.6	0.5	2.3	1.0
13. United Gas Pipe Line Co.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
14. Total Group I	18.6	19.7	20.7	24.6	25.7	27.3	29.6	29.1	29.6
15. II. *Companies Beginning Operations after 1942*									
16. Michigan-Wisconsin Pipe Line Co.	0.0	0.0	0.0						
17. Tennessee Gas Transmission Co.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
18. Texas Eastern Transmission Corp.	0.0	0.0	0.0	0.0	0.0				
19. Texas Gas Transmission Corp.	0.0	0.0	0.1	0.0					
20. Transcontinental Gas Pipe Line Corp.	0.0								
21. Total Group II	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
22. Total Groups I & II	13.5	14.9	17.2	20.9	23.2	25.3	27.9	28.8	29.6
23. III. *Other Companies*									
24. Hope Natural Gas Company	23.5	22.1	25.2	30.0	28.9	28.3	33.7	45.1	26.6
25. United Fuel Gas Company	19.4	18.1	18.5	25.3	34.8	26.9	31.1	44.4	44.8
26. Total Group III	20.9	19.8	21.3	27.3	32.1	27.6	32.4	44.8	35.7

Source: "Statistics of Natural Gas Companies," published by the Federal Power Commission and companies' annual reports.

[1] Includes Canadian River Gas Company.

[2] Includes Texoma Natural Gas Company and Texas Illinois Natural Gas Pipeline Company.

[3] Includes Trunkline Gas Company.

Exhibit 569, introduced in the hearing January 30, 1953.)

Because of the Federal Power Commission's persistent practice of giving different treatment for gas which is purchased by a pipeline at arm's length and for the gas which is owned and produced by the pipeline itself, it would normally be expected that the major pipeline companies would effectuate changes in corporate ownership and operations for plain business reasons. A study of the operations of such companies was undertaken to see whether this was the case. The results of the study are tabulated in the accompanying table (page 422), entitled "Gas Produced As Per Cent of Gas Produced and Purchased for Major Natural Gas Pipeline Companies, 1942-1951."

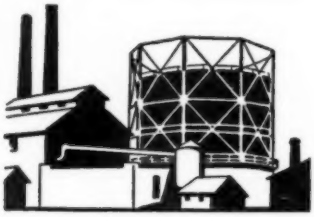
As will be seen from inspection of the table there has been a very substantial decline in the percentage of "gas produced" as compared to the percentage of "gas produced and purchased" by natural gas companies. This decline applies to practically every single natural gas company that produced a portion of its requirements from its own reserves in 1942, and of course it applies to the totals for the group as a whole. The study shows also that no single new major pipeline company going into operation after 1942 owns reserves. All of the new major pipeline companies depend entirely for their supply upon gas purchase contracts.

Among the companies that have commenced pipeline operations after 1942 are Michigan-Wisconsin Pipe Line Company, Tennessee Gas Transmission Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, and Transcontinental Gas Pipe Line Corporation. For the year 1951 these companies purchased a total of 1,163,000,000 MCF of gas. None of these companies produced any of their supply with the single exception of an insignificant amount reported as having been produced by Texas Gas Transmission Corporation.

The basic data were obtained from the Federal Power Commission's annual publication, entitled "Statistics of Natural Gas Companies" and from the companies' reports on file with the commission.

The table shows the pipeline companies divided into three groups. Group I consists of 12 major gas pipeline companies, all of which were in operation during the entire period from 1942 to 1951 except for the year 1943, for which data were not readily available. Group II lists five companies that commenced operations after 1942. Group III consists of two companies, Hope Natural Gas Company and United Fuel Company, each of which is a constituent part of a large gas production, transmission, and distribution system. These two companies are reported separately for the reason that they have production of their own in the Appalachian area and they also purchase gas from pipelines originating in the Southwest.

For the first group of companies, the total of gas produced and purchased in 1942 was 991,662,000 MCF, of which 29.6 per cent was produced. For the same group of companies, the total of gas produced and purchased in 1951 was 3,023,603,000 MCF, of



Relation of Price to Conservation

"AN artificially low price encourages dump sales of gas for fuel under boilers and other so-called 'inferior' uses. It is well recognized that price is a key factor in conservation. Maintaining an artificially low price hurts conservation in two ways; namely, (1) it encourages wasteful overuse of this commodity, and (2) it fails to provide any real inducement or encouragement for the discovery and development of additional reserves for pipeline companies."

which only 18.6 per cent was produced. In the case of the five companies that began operations after 1942, the percentage of gas produced is zero for all years, including 1951. When Groups I and II are combined, it will be seen from the summary sheet that there has been a gradual and continuous decline in the percentage of gas produced by natural gas pipeline companies, starting from 29.6 per cent in 1942, going down to 23.2 per cent in 1947, 14.9 per cent in 1950, and 13.5 per cent in 1951.

Unless the commission changes its policy, it seems clear that the percentage of gas produced by natural gas companies will continue to decline. The failure on the part of the commission to give full recognition to the value of natural gas owned by regulated natural gas pipeline companies has tended to drive natural gas companies out of the gas production business. Most of the major pipeline companies which had substantial reserves ten years ago have disposed of part or all of their reserves. Arkansas Louisiana, Cities Service, El Paso Natural, Panhandle Eastern, Southern Natural, and United Gas Pipe Line all have disposed of some of their reserves.

THE economic results of the commission's treatment of gas production properties have a direct impact upon consumers. Natural gas companies have lost the incentive to acquire new leases and to explore for and develop new gas fields. This is illustrated by the fact that exploration and development costs as a percentage of gas operating revenues declined in 1950 to one-half the figure that prevailed in 1945. During the same period, the annual cost of natural gas purchased by natural gas pipelines increased over 100 per cent from

$224,000,000 in 1945 to $553,000,000 in 1950.

The policies of the Federal Power Commission have, in my opinion, caused the ultimate consumer to pay a higher price for natural gas. A pipeline company which does not own a portion of reserves constituting its gas supply immediately loses its bargaining position and therefore has to pay the higher price which the producer can command. The highly competitive purchasing market creates a splendid bargaining position for the independent producer, and the pipeline which does not own its own reserves must pay accordingly. It is difficult at this time to purchase gas without a third party favored nation clause and without an FPC jurisdictional clause which permits the producer to cancel a contract at its option if the sale of gas to the regulated company falls under the regulation of the FPC.

THE failure of the Federal Power Commission to grant or attribute the commodity value of gas to pipelines owning their own reserves has actually cost the consuming public many times more in total than has been saved by discriminating against such pipeline companies. Less than 15 per cent of all the gas moving in interstate commerce is owned by natural gas companies under the commission's jurisdiction. More than 85 per cent of the total interstate gas supply is produced and sold under conditions of a free competitive market. This 85 per cent produced by independent producers is now selling at prices far higher than would have been the case had pipelines been encouraged to acquire and retain their own reserves. The denial of a fair field price on 15 per cent of the gas produced by a handful of natural gas companies is far outweighed by the higher prices paid by all the other pipeline companies which purchase 100 per cent of their requirements at arm's length from independent producers. Therefore, in my opinion, the commission's policy has weakened the bargaining position of pipelines *vis-à-vis* independent producers and has discouraged pipelines from exploring for and developing natural gas reserves.

There are many advantages to a pipeline and to the consumers who are served from the pipeline flowing from ownership of gas reserves. The pipeline is in a better bargaining position when it comes to negotiating gas purchase contracts at arm's length with independent producers. Also, a pipeline can take care of variations in demand by increasing or limiting withdrawals from its own reserves. The pipeline can also take care of variations in the volume of gas deliveries from others due to variations in both oil and gas production, conservation restrictions, etc. To summarize, a natural gas company owning a portion of its own supply is able to render more economic, uniform, and reliable service.

AN artificially low price encourages dump sales of gas for fuel under boilers and other so-called "inferior" uses. It is well recognized that price is a key factor in conservation. Maintaining an artificially low price hurts conservation in two ways; namely, (1) it encourages wasteful overuse of this commodity, and (2) it fails to provide any real inducement or encouragement

for the discovery and development of additional reserves for pipeline companies.

It is suggested by the Paley Commission report (the President's Materials Policy Commission report, entitled "Resources for Freedom," Volume III, The Outlook for Energy Resources, Chap 2, pages 15 to 23, inclusive) that there are four national objectives in relating natural gas to our economy:

> (a) To stimulate maximum economic discovery of natural gas resources.
>
> (b) To avoid waste in the production of natural gas and to insure that full advantage is taken of the driving force of natural gas in lifting oil in order to get maximum economic recovery of the oil and gas.
>
> (c) To improve the pattern of use so that relatively more gas goes to those uses in which it has a special advantage and relatively less to those that could be served just as well by other fuels.
>
> (d) To lay the basis for an orderly transition to other fuels at that distant but inevitable date when natural gas production falls off.

THIS report goes on to show that gas is very cheap in comparison to oil. For example, a barrel of petroleum sells at the wellhead in Texas for about $2.65, while the equivalent amount of gas sells on the average for about 30 cents in the same region. Similarly, for the large industrial energy users, the price of residual fuel oil of about $1.75 at a Texas refinery compares to the cost of an equivalent amount of natural gas of from 30 cents to 36 cents on old contracts, or 60 cents to 70 cents on new contracts. The report goes on to point out that gas being sold to industrial customers in Ohio at 42 cents and to residential customers at 54 cents is about half the cost of equivalent energy in the form of heavy fuel oil. In the language of the report:

> The industrial customers of the (gas) utilities were buying energy about 30 per cent cheaper than if they had bought residual fuel oil at tank-wagon prices, and the residential consumers about 40 per cent cheaper than if they had bought furnace oil. [Page 19.]

The report then goes on to say:

> The potential demand for natural gas at or near present prices to consumers far exceeds the amount currently being marketed. The construction of additional facilities for transportation and distribution will help meet some of the unsatisfied potential demand, but the excess demand will eventually have to be squeezed out either by company or governmental allocation or by such increases of price at points of consumption as will make the energy costs of natural gas comparable in competing uses with the cost of other fuels, with allowance for differences in convenience of use. [Page 19.] . . .
>
> There appears to be no economic basis for designing curbs on low-grade uses that would be more valid and more suitable than market forces in guiding the gas to the highest-grade use. [Page 22.]

IT is my conclusion that the best way to facilitate the attainment of the national goals enumerated in this report of the President's Materials Policy Commission would be to put the pipelines on an equal footing with independent producers in the matter of pricing the natural gas which the pipelines themselves produce.

A New Regionalism in Regulatory Administration

Regional utility development should stress economic rather than the political approach. But it is often difficult to draw a clear-cut distinction with the new administration emphasizing the "decentralization" approach. What is the outlook for future regulatory administration?

By LINCOLN SMITH*

GENUINE but not excessive decentralization in the development and control of natural resources will undoubtedly be a national policy in the near future. President Eisenhower's pre-election speeches and State of the Union address indicate a new concept of regionalism in the field of regulatory administration. While ultimate policy will be determined by the Republican Congress, the direction, or rather the redirection, the Chief Executive will give to policy through nominations and leadership will be toward private initiative, and local option and control.

The President's program does not depend exclusively on Federal bureaucracy, but upon a partnership of the states and local communities, private citizens, and the Federal government. This combined effort can advance the development of river valleys and hydroelectric power, but the new emphasis will be on local and regional rather than on national control. The program resembles that advocated by the White House Chief of Staff, Sherman Adams, who, as governor of New Hampshire, said:

> The development of the water resources of New Hampshire should be on the basis of a well-understood partnership between private owners, the state, and the Federal government, and through the medium of a compact with other states.[1]

The centralization of the past two decades, largely opportunistic, was a responsibility of Democratic administrations and Congresses. Leadership,

*For personal note, see "Pages with the Editors."

legislation, funds, and staffing of regulatory agencies and of particular departments engaged in regulatory work were the means of promoting public power. Approximately one-fifth of the power generated in the United States is currently distributed and sold by government agencies. The creation of government corporations and the widespread use of grants-in-aid extended regulation upward. To some degree, national control was substituted for banker control.

After 1933, with emphasis on planning and regionalism, the use of interstate compacts was greatly precipitated. Passed in identical form by Congress and the states affected, the theory was to allow states to work out their regional problems with the guidance and approval of the national government. But that "approval" sometimes amounted to congressional veto of local desires. The Connecticut River Flood Control Compact, for example, though ratified by the four states concerned, was not passed by Congress. A group of Congressmen seemed to be more interested in the production of public power to compete with business-managed corporations rather than in flood control.[2]

Centralization and top-heavy regionalism also permeated the Federal Power Commission, Interstate Commerce Commission, and to a lesser extent the then newly created Securities and Exchange Commission. The FPC was drastically revitalized through reorganization and changes in its personnel with the advent of the New Deal. This new spirit and conception of the commission's powers and responsibilities sometimes cut across regional interests and state prerogatives.

Ecological and technological factors then and now require the region instead of the state as the administrative area for the development and control of the nation's energy resources. One or two centuries ago rivers formed natural and historical boundaries between states. But at present rivers and river basins are cohesive forces which unite rather than separate political, economic, and geographical areas. Power development transcends state lines, and no longer can be localized to a single state. Regionalism, which twenty years ago was largely a sociological and cultural concept and a reaction against the old sectional conflicts, was implemented by the river basin approach and adopted by the national government as the administrative area of public power projects. It was virtually a symbol of the New Deal. But the question of ultimate control of the region remained unanswered.

Regionalism, in theory, was then supposed to mean much local participation and decision making by natives on the scene. Tennessee Valley Authority propaganda stressed regionalism, planning, and decision making at the grass roots, and decentralization as an antidote for remote control.[3] The area within which local participation and decisions was permitted, however, was defined and controlled from above. While the influx of capital strengthened local government by giving it more functions and stimulated markets for electricity, part of the increased functions and power markets were obtained by absorbing

private power companies and by putting "practically every city in Tennessee as well as many in adjacent states, in the power business." [4] An objective and trenchant study found that the TVA officials worked with the more prosperous farmers of the valley, thereby establishing a grass-tops rather than a grass-roots policy.[5]

DR. Arthur E. Morgan, first chairman of the Tennessee Valley Authority, was asked by the Senate Committee on Public Works in 1948 for his opinion on regional developments and on regional governments to administer river basin water programs. This is what he said:

> If we get at the bottom of this proposal we see that it arises from a feeling that state and local self-government is a failure, and it must be displaced by a centralized administration controlled from the national capital.[6]

Although that was the view of only one man, it is significant of a trend that regionalism was an administrative device superimposed on states from above, with relatively little attention paid to local customs and desires. The regional approach to date has been considered political rather than economic, and has been used by proponents of public power to attain their objectives.

STATES fought centralization and centrifugal regionalism in various ways. Oklahoma's governor called out state troops to make a show of force as a dissent from Federal policy[7]; Vermont farmers, with shotguns, routed a crew of Army Engineers surveying for an unwanted flood-control project[8]; several southwestern states threatened to limit or place an embargo on the export of natural gas in retaliation to regulatory policies of the Federal Power Commission[9]; and Idaho, under Republican leadership, passed a law prohibiting sale of any electric power development in the state to a governmental or quasi public corporation from outside the state.[10] State officials and executives of privately owned corporations spread their propaganda as they "viewed with alarm" the creeping trend toward federalization and socialization of natural resources.[11]

The extreme alternatives in centralization or decentralization of natural resources were outlined by the United States Supreme Court. In one significant decision the court demonstrated that under its plenary authority over interstate commerce, Congress may assert jurisdiction over the cord from a light plug to an electric toaster; but Congress did not go that far. Congress "sometimes is moved to respect state

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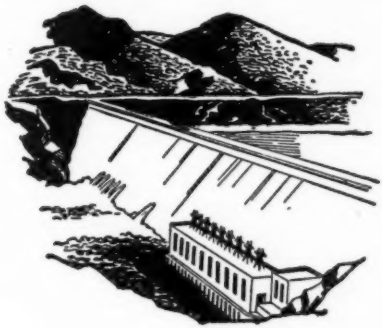
rights and local institutions even when some degree of efficiency of a Federal plan is thereby sacrificed. Congress may think it expedient to avoid clashes between state and Federal officials in administering an act. . . . Conflicts which lead state officials to stand shoulder to shoulder with private corporations making common cause of resistance to Federal authority may be thought to be prejudicial to the ends sought by an act and regulation more likely to be successful, even though more limited, if it has local support." [12] Mr. Justice Black recognized two opposing philosophies. Whereas state trade barriers to interstate commerce bring about "Balkanization" of commerce in the United States, others prefer this to governmental regulation of free enterprise. "To them the specter of bureaucracy is more frightening than Balkanization." [13]

EXTREME reactions by states and private industry produced some results. Two decades ago the Senate did not usually question presidential nominations to the independent regulatory commissions.[14] Subsequently, however, in the capacity of checking bureaucracy and centralization, the trend was altered. In "isolated instances that gathered with cumulative force," the Senate pushed and sometimes succeeded in its demands for a more general scrutiny of administrative appointments.[15] The Federal Power Commission, to cite one example, probably reached the height of its aggressiveness in 1949. Subsequently, however, and at the behest of the United States Senate, came some changes in top personnel. The courts also restricted the commission of that era.[16] In a new atmosphere, the majority of the commission has shown professional vigor, yet with administrative self-restraint.[17] The result of the 1952 elections may affect top personnel and elevate a Republican to the chairmanship. In a political background more favorable to private power, states' rights, and devolution, the FPC as an arm of Congress and perhaps with a decreased budget is not likely to expand its jurisdiction. The Federal Power Act may be as it was originally intended to be, complementary to and not a substitute for state regulation.

A TIME lag, though, is inevitable before the Republican administration and Congress will make their full imprint on administrative agencies and achieve the apparent objectives for a new regionalism. Organic statutes provide bipartisanship and a continuum in membership which preclude wholesale changes, unless Congress, by law, should abolish the commissions, create new ones, or enlarge the number of commissioners. The response of the permanent and classified staffs of some of the administrative agencies and departments to changes in the top political personnel is yet unknown. Although recruited on the basis of merit and presumably without regard to party affiliation, certain atmospheres have infiltrated some of these staffs, notably in the Department of the Interior, in the last twenty years which cannot be eradicated immediately. The influence of key staff officials, who have been on the job for many years, may be extreme in some cases, until their bosses become acclimatized to their functions.



A New Look at Multipurpose Projects

"FUTURE multiple-purpose projects and perhaps those already in existence may have the costs attributed to power redefined, as a concession to the tax-paying utilities and to local tax authorities. Even the entire concept of multiple purpose may be limited, in deference to regional interests and local prerogatives. Utility companies in general and particularly states which have resisted these dams have claimed they were often designed largely for power generation under the guise of flood control."

ANOTHER important question is whether President Eisenhower will be able to check the Corps of Army Engineers who are responsible for the engineering surveys, estimates, and construction work of government projects. Senator Paul H. Douglas (Democrat, Illinois) recently concluded that the Army Engineers have never been restrained in estimating the benefits which will result from their projects and that their estimates in recent years have greatly underestimated costs.[18] Presidents Hoover, Roosevelt, and Truman were helpless in attempting to cope with or curb the influence of the Engineers. Except for unforeseen circumstances, probably neither a General nor a President can get the Army Engineers within the administrative hierarchy. Some of the hostility to the Army Engineers, however, has been because the Corps has tended to cater to local interests within congressional districts, as opposed to centralized administrative jurisdiction. In this respect their activities will fit into the new configuration.

Although contemplated changes cannot be immediate and there will be no reactionary elimination of "going concerns" such as the TVA and Bonneville Power Administration, a devolutionary emphasis is expected in the light of a new regionalism. Dr. Paul J. Raver, Bonneville chief, has been quoted as saying:

I suggest that we take power com-

pletely out of the hands of the Federal government and place it in the hands of a regional board, either elected or appointed by the governors of the states concerned.[19]

Dr. Raver suggested this board should be responsible for the task of financing and building power dams. The money for the construction, he thought, should be raised by bonds sold in the open market. Douglas McKay, President Eisenhower's Secretary of the Interior, was moved to comment that this idea was "on the right track," and that "I am in favor of any good plan to get the government out of the power business."

ONE can only guess how the new administration will affect TVA. Possibly the plan advocated by the late Wendell L. Willkie but rejected by the TVA for a "ceded area" between the TVA and Commonwealth & Southern will be revived. That would have authorized the sale of public power for industrial uses within a specified area, with restrictions on sales outside.

The Republican party's opposition to "all-powerful Federal, socialistic valley authorities" may have been reflected in the report of the Missouri Basin Survey Commission, which was released on February 20, 1953. Although ultimate authority still seems to rest at the national level, the report laid emphasis on state and local cooperation. Instead of an authority, a co-ordinating agency would be in charge. The Federal government will operate the big plants already completed and those under construction, but the commission recommended that non-Federal utilities might be included in future developments if the owners of these developments "assume planning and operational obligations similar to those a Federal construction agency would accept." Three of the eleven members of the commission dissented from the majority proposals because they thought the Federal government would have too much control. However, this report is indicative of a trend toward greater control at the grass roots.

INASMUCH as additional multiple-purpose projects are on the Eisenhower program, but at local option and especially in times of crisis, one may expect greater experimentation and use of "mixed enterprise" in the development and control of the nation's natural resources. Although both public and private power agencies presumably find some common ground in the Bonneville setup, and at the Hoover dam both public and private funds were used for river basin development, the emphasis heretofore has been on the public power aspects. The business-managed utilities will probably obtain a larger segment of the enterprises in future.

Another mixed enterprise was contemplated on the Connecticut river, a multiple-purpose development for a navigable channel from Hartford to Holyoke, Massachusetts, with a power dam at Enfield Rapids. The Connecticut Light & Power Company filed an application with the FPC for a license to build and operate the power-generating facilities in co-operation with the Federal government. Recently, however, as of March 1, 1952, the Connecticut Light & Power Company obtained from the FPC a preliminary permit for three years to maintain

priority of application for license to construct the dam and power plant entirely by a subsidiary company.

Private enterprise will not compromise with collectivism. The assumption is made here, however, that the two are not entirely incompatible. Projects which are justified primarily on the basis of social desirability, flood control for example, cannot be undertaken without the use of public funds. To the extent that such public undertakings include bona fide incidental increments in the realm of economic values, or when additional expenditures will produce commodities for the competitive market, government and business are drawn together and supplement each other. The Power Authority of the State of New York, according to its chairman, John E. Burton, "cannot achieve the full benefits of its plan without the complete co-operation of the private utilities. The Federal government could not do so eitheir without securing such co-operation or putting the private utilities out of business. The Power Authority will not move in this latter direction." [20]

Sources of energy alternative to hydroelectricity will have a vital influence on the development of natural resources. Some evidence points to a resurgence of steam power. The rivalry between hydro and thermal electricity has ebbed and flowed in waves, depending on the fluctuations of cost and technological and political developments. Government power promoters have pushed hydro, sometimes for political reasons. As a result of their activities, the seemingly more rapid growth of hydro capacity in past years should not be attributed to any economic superiority. The costs of government hydro differ from the costs of privately owned steam-electric plants, so no comparisons can be made without adjustments. The present trend is toward the use of thermal plants using coal or oil. This is emphatic in New England, with its demand for firm power. Thermal capacity is quicker and often cheaper to install, and labor-operation costs are low. Federalized areas such as TVA and the Pacific Northwest must resort to large quantities of steam power to firm up hydro. Fred G. Aandahl, Assistant Secretary of the Interior, frowns on Federal steam power, and does not think the department should build "any steam plants to supplement the hydroelectric power they are generating." [21] In 1951 the West's power came 51 per cent from hydroelectric plants. But by 1975 only 38 per cent of the region's power is predicted to come from falling water, 8 per cent from gas and oil, and about 54 per cent from coal.[22]

¶ "Planning, *which in the true sense is only advisory, and a direction but not a goal, has been badly stigmatized under government auspices at the national level. One of the greatest weaknesses of national planning heretofore was that plans and surveys frequently ignored or did not give serious consideration to state and local desires.*"

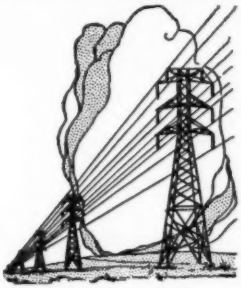
Nuclear energy already has been harnessed to produce electric power for everyday uses. If it becomes practical, hydro may be relegated to an inferior status, especially since a great majority of the more desirable sites already have been developed. Originally created as an operating agency, the Atomic Energy Commission already is functioning in the regulatory periphery, and eventually may become an independent regulatory agency. In June of 1950 the commission signed regulatory contracts with four private groups for experimental investigations for power. Congress may need to review the problem of public or private control of atomic power, and to apportion atomic energy costs between national defense and industrial use, not unlike the necessity of an apportionment at TVA.

FUTURE multiple-purpose projects and perhaps those already in existence may have the costs attributed to power redefined, as a concession to the tax-paying utilities and to local tax authorities. Even the entire concept of multiple purpose may be limited, in deference to regional interests and local prerogatives. Utility companies in general and particularly states which have resisted these dams have claimed they were often designed largely for power generation under the guise of flood control. The two objectives cannot always be combined efficiently, because the conditioning factors are different. Whereas power production needs a full pond to provide a fall of water, flood control demands an empty pool to absorb the extra water when it comes. If one dam must serve all purposes, it may not be very valuable and efficient for any one purpose.

SENATOR Paul H. Douglas, long an opponent of government largess, has given a helpful, if only partial formula for determining the real tests of any power project: 1. Is it economically justifiable? 2. Is power badly needed in that area? 3. Is it financially prudent in the interests of the national economy to carry out the program? 4. And, most important during a period of defense build up, is the project badly needed for defense purposes? [23] These are not platitudes; but in the final analysis, three, if not all four of them, depend upon value judgments. The fundamental question is *who* should be responsible for determining these policies? The Senator seems to assume that the decisions are to be made by the national government, and that the development of the nation's hydroelectric resources should be a major Federal responsibility.

The first point might be determined by either national or state governments, or jointly, and the answer depends somewhat on semantics and political philosophy. The second is largely a question of fact, and a prerogative of local government. The fourth is clearly an exclusive function of the national government. The third calls for a decision at the national level, but ought to be considered in relation to still another tenet.

This writer suggests a fifth, which rejects the premise that power development is a national or even a public function: Does the proposed project contravene local rights and desires, and would it be prejudicial to local interests? This question of local option is relative and not absolute, and



Need for Regional Planning

"In order for federalism to work, leaders, thinkers, and planners are as necessary at the lower as at the high level of government. A resurgence of state and regional planning, especially under private and quasi public authority, may occur. Revitalized regional planning will counteract bureaucratic trends at the top, and will be more reasonable and amenable to local wishes because it is done through local institutions."

must be seen in perspective because national defense is a Federal obligation and cannot be left to local or regional whim. On the other hand, conservation is a state right under the reserved powers (Tenth Amendment) of the United States Constitution. Hence, this right must be reconciled with the national government's jurisdiction over interstate commerce. In the time of emergency the strong hand of the national government is paramount; but otherwise due recognition to local option mitigates ultimate necessities. Hence, once again, it becomes necessary to try to resolve both national and state prerogatives by obtaining a common denominator which is neither static nor arbitrary, yet generally acceptable to both.

THE report of President Truman's Water Resources Policy Commission stressed Federal direction and control of the full development of hydroelectric power. It predicted that in "certain regions, the Federal government is, or will presently become, the main source of future power supply, and will provide a completely integrated wholesale regional power system for transmitting low-cost power to the major distribution center of the region." Despite some reference to local and state participation, regional administrations, river basin authorities, would be staffed by the President of the United States, and would not be responsible to the citizens of the area.

Throughout the year 1950 regional public hearings were held over the entire country in order to obtain an expression of public opinion in the establishment of a sound national water resources policy. Testimony offered by

New Englanders, for example, had little or no effect upon the thinking of the commission. The recent elections strengthen the previously drawn conclusion of Professor Raymond Penn of the University of Wisconsin that the report "probably will not be accepted as the water policy of the American people, nor will it aid materially in resolving the issues." [24] The professor further observed that the "report lacks constructive thinking on local, state, and regional relationships in formulating water policy." A new regionalism will redirect this conflict downward, and against the excesses of centralized control. Two regional surveys are presently being made, in the Northeast and in the Southwest. Progress in one of these areas will be analyzed in the sequel to this article.

PLANNING, which in the true sense is only advisory, and a direction but not a goal, has been badly stigmatized under government auspices at the national level. One of the greatest weaknesses of national planning heretofore was that plans and surveys frequently ignored or did not give serious consideration to state and local desires. This view is supported by the Association of Land Grant Colleges, that a mechanism is needed for "assuming that the programs and policies reflect the needs and wishes of local people." [25] Contrary opinion, as expressed by Tugwell and Banfield, is that "what is needed is a mechanism to assert the interest of the whole people against the local interest and to coerce the local interest when necessary."

In order for federalism to work, leaders, thinkers, and planners are as necessary at the lower as at the high level of government. A resurgence of state and regional planning, especially under private and quasi public authority, may occur. Revitalized regional planning will counteract bureaucratic trends at the top, and will be more reasonable and amenable to local wishes because it is done through local institutions. Since planning cannot conform to preconceived notions, its validity depends upon the open-mindedness and judicious temperament of the human beings who staff the agency. The planning functions of such organizations as regional governors' conferences, the New England Council, the National Water Power Panel of the Engineers Joint Council, taxpayers' organizations, associated industry groups, and other regional and professional organizations may be expected to assume a larger rôle in the development of resources policy. Though such groups often have political motives, they plan regardless of election results, and their value judgments are often based on economics.

FUTURE regionalism will probably stress the economic rather than the political approach, although no clear-cut distinction can always be drawn between them. The business-managed utilities make their expansion plans on a long-range basis, and this must be done without regard to changes on the political horizon. This point was well made for states by Governor Thomas E. Dewey of the state of New York:

> In the last thirty years water-power programs have been developed, policies formulated, and the laws passed. It seems to me quite significant that during the last thirty years there has been no interruption in the flow of the philosophical consideration of the ne-

cessity of development of water power and no change in approach of the state to that problem, even though political parties in control of our state have changed. In other words, it is an economic necessity to our part of the country and political considerations just do not change necessities.[26]

FORMER Governor Sherman Adams of New Hampshire, now a key man on domestic policy in the new administration, said shortly after the 1952 elections that the people "are able to make the difference between an expanding ... federalism *versus* a decentralizing, responsibility-assuming system of local government and community enterprise. . . . This, it seems to me, is today's challenge and today's opportunity."[27] In this, as in most conflicts of centralization and devolution, the important point is that national or state control should be merely a means, not an end in itself. Plenary control by states would be fully as inexpedient and ineffectual as nationalization of natural resources. But there is a common ground between the two extremes; its pendulum centers about genuine regional control which is neither of the puppet variety nor the exclusively parochial approach.

Footnotes

[1] Speech at the meeting of the New England-New York Inter-Agency Committee, Hanover, New Hampshire, September 6, 1951.

[2] Wilbur L. Cross, *Connecticut Yankee,* New Haven (1943). Page 375.

[3] David E. Lilienthal, *TVA, Democracy on the March,* New York (1944). *Passim.* Cf. "TVA is more an example of democracy in retreat than democracy on the march." R. G. Tugwell and E. C. Banfield, "Grass Roots Democracy—Myth or Reality?" in *Public Administration Review,* winter, 1950, page 49.

[4] C. Herman Pritchett, *The Tennessee Valley Authority,* Chapel Hill (1943), pages 56, 73.

[5] Philip Selznick, *TVA and the Grass Roots,* Berkeley (1949).

[6] Address by John E. Burton, chairman, Power Authority of the State of New York, at chamber of commerce banquet, Massena, New York, June 21, 1951.

[7] Lilienthal, *op. cit.,* page 159.

[8] Lincoln Smith, "The Proposed Development Authority Compact for New England" in *Political Science Quarterly,* March, 1951, page 53.

[9] Lincoln Smith, "Can Southwestern States Limit Gas Exportation?" in PUBLIC UTILITIES FORTNIGHTLY, Vol. XLVI, No. 4, August 17, 1950, page 223.

[10] *Idaho Codes* (1951). Cumulative Pocket Supplement. Page 132. Chap 3, § 61-327.

[11] Although a matter of degree, socialization and federalization cannot be used interchangeably. The former implies government ownership and control. The latter means formal national ownership, but control may be quasi public. The same leaders may remain in control, operating in essentially the same mood and way as before.

[12] Connecticut Light & Power Co. *v.* Federal Power Commission (1945) 324 US 515, 530, 58 PUR NS 1.

[13] Hood *v.* Du Mond (1949) 336 US 525.

[14] E. Pendleton Herring, *Federal Commissioners,* Cambridge (1936), page 73.

[15] Arthur W. Macmahon, "Senatorial Confirmation," in *Public Administration Review,* autumn, 1943, page 285.

[16] For example: Border Pipe Line Co. *v.* Federal Power Commission (1948) 77 PUR NS 76, 171 F2d 149; Idaho Power Co. *v.* Federal Power Commission (1951) 89 PUR NS 87, 189 F2d 665; Connecticut Light & Power Co. *v.* Federal Power Commission (1945) 324 US 515, 58 PUR NS 1.

[17] *Re* Phillips Petroleum Co. FPC Opinion No. 217, August 22, 1951.

[18] Paul H. Douglas, *Economy in the National Government,* Chicago (1952), page 105. See also, Arthur Maass, *Muddy Waters,* Cambridge (1951).

[19] Raymond Moley, "Socialists May Have Seen Light," in Boston *Herald,* December 30, 1952.

[20] Burton, *op. cit.* Note 6, *supra.*

[21] *P. U. R. Executive Information Service,* Washington, D. C., February 13, 1953.

[22] *The Wall Street Journal,* December 31, 1952.

[23] Douglas, *op. cit.,* page 110.

[24] Journal of *Land Economics,* February, 1951, pages 76, 78.

[25] Tugwell and Banfield, *op. cit.,* Note 3, *supra,* page 54.

[26] Address at the NENYIAC, Albany, New York, June 14, 1951.

[27] *New England News Letter,* Boston, December, 1952, page 7.

Washington and the Utilities

Congress Scans the Commissions

THE House Interstate and Foreign Commerce Committee, headed by Chairman Wolverton (Republican, New Jersey), has been scrutinizing the major regulatory commissions during recent weeks. As of this writing, the Securities and Exchange Commission and the Federal Communications Commission had been among those called on the carpet. The Federal Power Commission, originally slated to go on late in February, was postponed until a later date in March.

The object of these hearings was in the nature of an over-all inspection tour in reverse. The commission representatives showed up at the committee, instead of vice versa. It was Chairman Wolverton's thought that before going into a number of specific bills affecting the various regulatory laws, under which these commissions operate, it might be a good idea for his committee members to get a fundamental understanding and some practical impressions of how the various commissions are conducting their work. Witnesses at these hearings have been more or less confined to spokesmen for the different commissions. The committee is also hearing interested Congressmen, including those who have bills on the committee's agenda. Later on—probably in connection with specific bills to be taken up—outside parties will be heard.

The Securities and Exchange Commission spent a considerable amount of its time discussing its various duties under some eight different statutes, notably the Securities and Exchange Act and the Truth-in-Securities Act. But the commission's work under the Holding Company Act was given a fair amount of attention, in view of the questions being raised as to continuation of certain SEC functions, now that so many of the holding companies have been broken up and finally removed from the jurisdiction of the SEC. The case for the SEC was presented by Commissioner McEntire. It seems that some Congressmen would merge SEC's utility holding company security policing functions with those of the Federal Power Commission. This latter was an idea touched upon in the reports of the Commission on Organization of the Executive Branch of the Government (Hoover Commission).

THE inadvisability of merging SEC and FPC functions was cited by Commissioner McEntire, in his statement to the House Commerce Committee. Actually, McEntire said, "there is no overlapping between our two commissions." He doubted that any economies would result from a transfer of functions. There is, he said, "a fundamental and inescapable conflict between those who seek through rate regulation the lowest possible rates to consumers and those who are concerned with the financial stability and soundness of the companies."

McEntire repeated the fear that a single regulatory agency would tend to prefer one approach to the other, to the detriment of one or the other class. SEC finds that the "present separation of functions between us and the Power Commission provides a check and balance which may be very salutary." McEntire raised this issue in response to a question by a House Commerce Committee member on transferring of remaining Holding Company Act activities to FPC.

The idea that SEC might actually enlarge its scope of activity under § 30 of the Holding Company Act, as recently

suggested by Chairman Cook (PUBLIC UTILITIES FORTNIGHTLY, September 11, 1952, page 333), was touched upon in the House committee presentation. So far, SEC has neither the staff nor the money to engage in broad studies for making recommendations on the proper integration of gas and electric utility properties under § 30.

A specially appointed group has produced one confidential report which covers two companies—a sort of token operation to show what could be done. Of course, SEC has long been required under its ordinary duties to supervise particular holding company reorganization plans, and to make particular studies of proper economic integration in some instances. But Chairman Cook's idea was to enlarge this, under § 30, into a matter of general policy and a continuous operation with appropriate staff.

TESTIMONY concerning the FPC and the House committee's reaction to the same will find an even more widespread and attentive audience than the testimony on the SEC's surviving duties under the Holding Company Act. Several bills already have been introduced and more are likely before the session ends, dealing with commission activity.

Most controversial is expected to be proposed legislation to remove intrastate natural gas pipeline operators from FPC jurisdiction where such facilities are mainly used in connection with distribution, rather than wholesale supply. The National Association of Railroad and Utilities Commissioners, which supported the Bricker-O'Conor Bill in the last session of Congress, probably will be heard again when this matter comes up for review.

Some utility people—especially in the natural gas field—would like to have the congressional committeemen get an idea of the scope and consequences of some FPC regulatory practices as they have developed in recent years. This may mean going into such things as the composition of the rate base, rate of return, depreciation, cost of money to attract necessary financing for expansion, etc.

Because of the numerous items on the committee's agenda, it hardly seems likely that specific bills to amend either the Natural Gas Act or the Federal Power Act could be reached for hearing much before the end of April. Already companion bills on rectifying the so-called East Ohio Gas Company decision of the U. S. Supreme Court have appeared in Congress. One is a bill by Representative Bow (HR 2679). Its companion (S 1051) was introduced in the Senate by Senator Bricker (Republican, Ohio).

These bills would release the intrastate natural gas distributors from FPC jurisdiction, with a provision exempting also those facilities for distributing natural gas in a single "metropolitan area." Similar provisions were contained in the old Bricker-O'Conor Bill, which actually passed the Senate on July 5, 1952, but died in the House during the last session.

McKay on Public Power

SECRETARY of Interior McKay has reached no decision on whether his department will continue to oppose, before the FPC, the Idaho Power Company's application to build its Oxbow project on the Snake river. McKay told members of the National Press Club recently that he was neither for nor against the construction of Hell's Canyon dam by the Federal government, but expressed the view that new construction should be confined to those projects on which there is little or no disagreement, while more controversial projects are re-examined from the standpoint of their economic feasibility. McKay promised a decision on the Oxbow project question before April 13th.

In other respects, Secretary of Interior McKay continues to retreat from the strong propublic ownership attitudes taken by his predecessor, Secretary Chapman, on controversial matters affecting Interior Department's public power plans. Last month, McKay said that he knew of no objection to construction of a hydroelectric dam at Roanoke Rapids by the Virginia Electric & Power Company.

Exchange Calls And Gossip

Court Blocks New Phone Rates

THE enforcement of telephone rates prescribed by the city council of the city of Texarkana, Texas, was enjoined last month by the U. S. District Court for the Eastern Division of Texas. The General Telephone Company of the Southwest operates the telephone exchange at Texarkana, serving the twin cities of Texarkana, Arkansas, and Texarkana, Texas. Last August the public service commission of Arkansas authorized the company to increase telephone rates for Texarkana, Arkansas. Telephone franchises in both Texarkana, Arkansas, and Texarkana, Texas, require that the rates be the same in each city. The city council of Texarkana, Texas, refused to concur in the exchange rates fixed by the Arkansas commission, and on February 2, 1953, authorized the company to increase its exchange rates in an amount approximately one-half of the increase granted by the Arkansas commission.

The city council used an original cost rate base less observed depreciation of 18 per cent plus materials and supplies, resulting in a rate base of $2,353,072.72. The company presented to the Federal court evidence of the value of all its property in the Texarkana exchange. The court overruled motions to require the company to separate property as between Texarkana, Texas, and Texarkana, Arkansas, and also overruled motions to require the company to separate its property as to property used for interstate toll and property used for intrastate toll. The court further overruled motions claiming the court lacked jurisdiction because of the Johnson Act, which requires that state appellate remedies be exhausted in rate cases before recourse to the Federal courts.

The court held the city council of Texarkana, Texas, was required to find a fair value rate base and to include reproduction cost valuation as well as original cost valuation. The court determined a fair value rate base depreciated of $3,021,994.55, and on this valuation found that the rates fixed by the city council would produce a return of only 3.9 per cent. Under the injunction granted by the court the company is now charging in both Texarkana, Texas, and Texarkana, Arkansas, the rates fixed last August by the Arkansas commission. Company officials stated that these rates would produce a return of approximately 5 per cent on the rate base fixed by the Federal court.

Bell System-CWA Open Contract Talks

CONTRACT negotiations have gotten under way between the CIO Communications Workers of America and the Bell telephone system. Sixty-day termination notices required under the Taft-Hartley law have been served on Ohio Bell, New Jersey Bell, Bell Laboratories, Pacific Telephone & Telegraph, Michigan Bell, and Western Electric. A total of 81,195 workers are covered by this first cluster of CWA-AT&T agreements. Other contracts coming up for negotiations will bring the total number of workers covered to 324,054, the number of Bell system employees represented by CWA. The first negotiating session began March 4th in Cleveland between CWA negotiators and officials of Ohio Bell. Union contract de-

mands center around a series of basic objectives set as bargaining goals by CWA's convention last June.

The union is laying particular stress on demands for basic wage increases, narrowing of wage, job, and locality differentials, health and welfare, including improved pensions and a proposed company-financed hospital, medical, and surgical plan. Seniority, grievance procedures, and regulations covering discharges and demotions will be overhauled, according to the union's proposals. As in previous years, CWA demands for pay boosts are stated in general terms—"a reasonable general wage increase." According to Joseph A. Beirne, CWA president, the union bases its case for a wage boost, among other things, on "the industry's ability to pay, the lag of phone workers behind other workers, increased productivity in the industry." Beirne said the lag of telephone workers behind other groups has become increasingly serious.

"REAL wages of telephone workers have gone up only $1.11 a week since 1939," Beirne said. "During the same period real wages of steel workers went up $13.52 a week. It would take at least 25 cents an hour to restore phone workers to the relative position they occupied in 1939." Beirne added that since 1939 phone worker hourly earnings have dropped from twelfth to twenty-seventh place in a list of 45 representative industries. He also said that in a list of 125 manufacturing and nonmanufacturing industries phone workers stand seventy-second in hourly earnings, eighty-fourth in weekly pay. "This is a shameful record for AT&T, the world's largest and richest business corporation," Beirne said.

In a communication to CWA workers, Beirne commented on the start of bargaining with the Bell system, expressing the hope that this year's negotiations can be concluded without a strike. He said:

> I do not believe a strike is inevitable. We shall do everything honorable to obtain peaceful settlements. Nevertheless we must all recognize that when a majority votes strike and when strikes are forced by management, we must support such strikes wholeheartedly and with enthusiasm.

Northwestern Bell Wins Rate Boost

A 2-to-1 decision by the North Dakota Public Service Commission authorized Northwestern Bell Telephone Company to increase exchange telephone rates in the state by about $450,000. The company requested an increase of about $1,128,000. The increase granted was calculated to yield a rate of return of 5.75 per cent on the company's North Dakota investment.

The approved rates will increase the rate for business individual line service 60 cents per month in smaller exchanges and up to $1.05 per month in Fargo. Revised residential rates will be increased 35 cents per month for smaller exchanges and up to 50 cents per month in Fargo. Rural rates were boosted 20 cents per month.

The commission said the company's gross operating revenues from North Dakota operations in 1952 was about $7,275,000. The company's net intrastate investment as of December 31, 1952, was estimated at $18,487,000. The commission's majority decision stated:

> It is apparent that the applicant is entitled to an increase in rates if confiscation of its properties is to be avoided and if the additional investment necessary to serve the anticipated growth in North Dakota industry is to be reasonably expected.

The company asked for a return on its investment of 6½ per cent. But the majority decision said 5.75 per cent would be reasonable "under the facts and circumstances of this case." A dissenting opinion denied the necessity of a rate increase and disagreed with the manner in which it was determined, as well as with the basis on which the increased rates were apportioned.

Financial News and Comment

By OWEN ELY

Should SEC's Utility Functions Be Transferred to the FPC?

THE Securities and Exchange Commission has recently prepared a 64-page statement for the Committee on Interstate and Foreign Commerce, giving a general review of the commission's functions and record of accomplishment, together with answers to specific questions propounded by the committee. Portions of the statement are summarized below.

The commission considers its major accomplishment to have been the protection of the American investor, and states its philosophy as follows:

> You will recall that the downfall of the capitalistic system was predicted quite some time ago by Karl Marx. His prediction has not come true, at least in the United States. Instead what we have had is a tremendous growth of our capitalistic economy based on a constant widening of its base. Earlier in the development of our economy a "capitalist" was typically a man of great wealth who had firsthand information about the situations in which he invested and controlled them. Today the resources of capitalists of this class are completely inadequate to finance our expanding industrial economy. The great bulk of capital for American industry, and we might add for American defense, comes from investors of smaller means who have no direct connection with the enterprises in which they have invested. In short, there has been a widespread divorcement of ownership from control. There can be no doubt but that this broadening of the base of our Capitalism is a development that has been necessary to the survival of both Capitalism and democracy, but it has brought with it a host of problems.

THE statement then points out the helpless position of the ordinary investor prior to the adoption of the Securities Act, stating that he "had no source of reliable information . . . could not tell what a share was worth or be sure that the venture was not unduly risky or . . . rigged . . . that he was without an effective voice in the control of

DEPARTMENT INDEX

the enterprise" and could not protect his interest in a reorganization.

This would appear to be a somewhat sweeping statement, for even in the bad days of the 1920's there were several well-established investment services, and a number of large investment houses maintained sizable staffs of conscientious analysts for the purpose of scrutinizing security data and advising their clients. To us it would seem that the excesses of the 1929 market were due in some degree to the failure of the government to restrict security loans and pool operations, which permitted and encouraged a tidal wave of security speculation. This gave full play to the activities of promoters, particularly in the utility holding company field, where "growth possibilities" and "high leverage" became the magic symbols which lead many investors to ignore the current statistics. However, there is no doubt that if the SEC had been functioning during this period it would have been able to prevent many, perhaps most, of these speculative excesses, particularly in the utility field.

Commenting on its administration of the Public Utility Holding Company Act of 1935, the commission points out that the Federal Trade Commission began the investigation of utility holding companies as early as 1928, pursuant to Senate Resolution 83 in the 70th Congress. (It seems unfortunate that this investigation was not immediately effective in preventing promotional excesses in utilities, and that despite the market crash seven years elapsed before the Holding Company Act was enacted.)

THE statement reveals that during the early stages of the program to regulate holding companies, around 1941, the commission had a staff of 1,723 employees, while now with this program almost completed (and with bankruptcies less frequent) there are only 780. In 1941 the commission devoted 234 man-years to work under the Holding Company Act, particularly § 11, while in the current fiscal year only about 63 man-years will be available, the bulk of this being outside of § 11. The holding company systems, in complying with § 11, have divested themselves of 763 companies with assets totaling over $10 billion. Nevertheless, the registered holding company systems now functioning still have, due to the tremendous expansion of the utility industry, assets of $13.6 billion compared with the $15.1 billion reported in 1941.

THE SEC has now considered and passed upon the major reorganization plans of all of the registered utility systems with only one exception, International Hydro-Electric Corporation, "and as to it we are reasonably hopeful that a solution will be forthcoming within the next few months." However, it was noted that a considerable amount of odds and ends of work still remains in connection with § 11, which is now being taken up as rapidly as the limited staff will permit. With respect to the suggestion that remaining work and functions under the Utility Holding Company Act might be transferred to the FPC when the § 11 program is completed, the statement points out:

> After § 11 is completed as to all of the major systems, there will remain the large number of companies which have had a temporary exemption and which must be looked at. As you know, the Hoover Commission seems to have looked into this matter, but did not make a recommendation to that effect. Actually, there is no overlapping between our two commissions. The "supremacy clause" of § 318 assures that. Moreover, in the field of regulation of financial practices, and particularly in the regulation of capital issues and capital structures, the FPC has limited jurisdiction and limited experience; therefore, it seems questionable whether any economies would result from a transfer of functions.
>
> Finally, it should be remembered that there is a fundamental and inescapable conflict between those who seek through rate regulation the lowest possible rates to consumers and

those who are concerned with the financial stability and soundness of the companies. Regulatory agencies having jurisdiction over both aspects in the very nature of things tend to prefer one to the neglect of the other. The present separation of functions between us and the Power Commission provides a check and balance which may be very salutary. We should continue to explore the possibilities of combining functions among the several administrative agencies, but the commission does not believe that the answer lies in transferring all of our Holding Company Act activities to the Federal Power Commission.

THE SEC also commented on the new program under § 30 as recently proposed by Chairman Cook. The statement mentioned that this was not entirely novel, since some of its utility work in the past "has had § 30 aspects." For example, there have been a large number of transfers of property between systems, and acquisition of properties by registered utilities under §§ 9 and 10.

The FPC has authority under § 202 of the Federal Power Act to recommend interconnection of electric utilities and interchange of current but it is not concerned with transfers of ownership, "and the industry has long recognized that there are situations where full interchange and effective operation can be achieved only through common ownership. It is this field which § 30 covers." Due to budgetary restrictions, the SEC thus far has done no recent work under § 30 except to assist two companies which were negotiating a property transfer.

GAS AND ELECTRIC UTILITY FINANCING*
(In Millions)

	February 1953	*Jan.-Feb. 1953*	*% Increase Over 1952*
Electric Utilities			
Bonds	$164	$211	88%
Preferred	14	58	132
Common	54	127	225
Total	$232	$396	125%
Gas Utilities			
Bonds	$ 30	$ 50	D22%
Preferred	10	13	—
Common	—	3	50
Total	$ 40	$ 66	—
Total Electric and Gas	$272	$462	91%

*As compiled by the Irving Trust Company. D—Decrease.

Should Per Share Earnings Be Reported on "Average" or "Outstanding" Shares?

DUE to the large amount of new money financing in recent years, utility earnings statements have been affected by the considerable amount of idle capital on which costs were accruing, while the corresponding earnings have been delayed until the new properties could be constructed, tested, and put in commercial operation. In many cases bank loans have been resorted to during this interim period, and the cost of these funds (after deducting income taxes) was more or less nominal during the period of very cheap money rates. However, this practice was not uniform and, in any event, short-term money rates have now risen sharply.

A widely adopted device is the use of the item "interest on construction—credit" placed with the fixed charges. Most companies, it is believed, accrue 6 per cent on the funds invested in new construction, regardless of how the money was raised, on the theory that when the property is placed in operation it will normally earn 6 per cent. This is, of course, a rule-of-thumb adjustment, since in some cases the new funds might have been obtained at low cost through bank loans, and in other cases at a relatively high cost by equity financing. However, any distortion of earnings would be temporary, and would "average out" for the utilities as a whole. A more serious statistical defect is the location of this item with fixed charges. It should

properly be placed between net operating income and miscellaneous income, and perhaps relabeled "estimated potential earnings of property under construction." Its present location leads to distortion of total fixed charges and thus may make the valuable ratios "number of times fixed charges earned" and "number of times charges and preferred dividends earned" almost meaningless.

More recently it has been recognized that the use of the "interest on construction credit" does not provide an adequate offset to the dilution of common stock earnings when these are based on the currently outstanding number of shares. Some utility companies have been advised, by the certified public accountants who audit their accounts, that it would be proper to report share earnings on the basis of a quarterly average of the number of shares outstanding, which would correspond to the twelve months' total of the quarterly dividend payments. Accordingly, an increasing number of companies have been following this method.

Unfortunately, some of them no longer report the actual number of shares outstanding, so that the old-fashioned analyst or investor cannot readily adjust the figures to the old basis.

It is perhaps annoying to utility analysts to have some share earnings stated in one way, and others in another. The Irving Trust Company (Bulletin 4, dated February 27th) asked a group of twelve utility analysts to indicate their preference. The result of this poll was as follows:

All the analysts wanted to have available the twelve months' earnings on actual shares, but half of them also wanted the earnings based on average shares. (Apparently they preferred a monthly to a quarterly average.) In any event, the method used and the number of shares should be noted in the financial statement. For periods less than twelve months the average share method should not be used, since there are too many complications along with the seasonal factor.

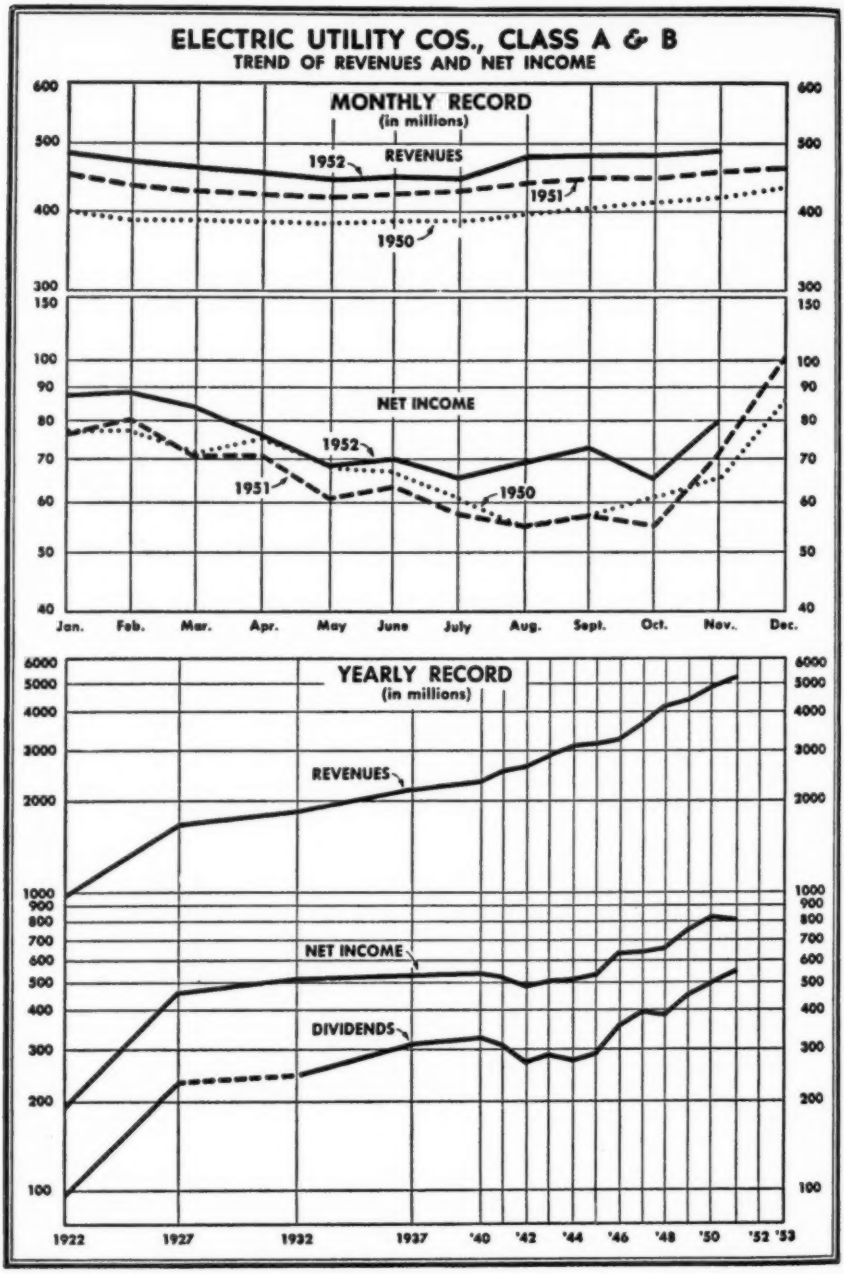
There are two other factors to be considered. A stock split or a stock dividend should not be treated in the same way as a new-money issue of stock, but rather calls for an adjustment of past and present earnings and dividends, to put them all on a comparable basis. The financial services make such adjustments for splits, but possibly not for small stock dividends.

Another problem is the case of a convertible issue of which a substantial proportion has suddenly been converted into common stock. The analysts concluded that the increase in common shares should not be "averaged," since this case does not represent an injection of new money and earnings have presumably been received over the preceding year from the use of the cash originally raised by selling the convertible issue.

In the tables presented in each issue of this department, it is impracticable to show share earnings on both average and outstanding shares since this might involve presenting two sets of price-earnings ratios, dividend pay-out percentages, etc. Where the figures are given both ways, the figure based on outstanding shares will be given preference with the average share earnings indicated by footnote. However, if only the average figure is readily available, it will be used, with a footnote explanation.

Natural Gas Reserves Increase

Proved recoverable natural gas reserves in the United States on December 31, 1952, approximated 200 trillion cubic feet, an increase of nearly 6 trillion over the previous year, it was recently announced in a joint report of the committee on reserves of the American Gas Association and the American Petroleum Institute. Since 8.6 trillion cubic feet were used in 1952, the total new gas "proved" in that year was 14.5 trillion or about 7.5 per cent. The reserve of natural gas liquids also rose to almost 5 billion barrels, compared with 4.7 billion


ELECTRIC UTILITY COS., CLASS A & B
TREND OF REVENUES AND NET INCOME
MONTHLY RECORD
(in millions)
REVENUES
1952
1951
1950
NET INCOME
1952
1951
1950
Jan.
Feb.
Mar.
Apr.
May
June
July
Aug.
Sept.
Oct.
Nov.
Dec.
YEARLY RECORD
(in millions)
REVENUES
NET INCOME
DIVIDENDS
1922
1927
1932
1937
'40
'42
'44
'46
'48
'50
'52
'53

in the previous year. Crude oil reserves at the end of the year were 28 billion barrels *versus* 27.5 billion previously.

Of the 14.5 trillion cubic feet of additional natural gas proved last year, 8.9 trillion reflected exploration and drilling in existing fields and 5.4 trillion represented reserves in newly developed fields. The industry made rapid strides in developing underground storage, and at the end of 1952 had added nearly 200 billion cubic feet to estimated reserves stored underground.

Following are the estimated gas reserves for recent years (not including natural gas liquid reserves) for which data are available, in trillions of cubic feet:

	Net Production During Year	*Est. Reserve at Year-end*	*Increase In Est. Reserve*
1946	4.9	160.6	—
1947	5.6	165.9	5.3
1948	6.0	173.9	8.0
1949	6.2	180.4	6.5
1950	6.9	185.6	5.2
1951	8.0	193.8	8.2
1952	8.6	199.7	5.9

While reserves remain quite ample, the figures seem to us to indicate (1) the importance of avoiding waste of natural gas, particularly the reduction of "flaring" to a minimum; (2) the necessity of continued write-off provisions in the Federal income tax law, to stimulate wildcatting, exploration, and development of new reserves; and (3) a further increase in the development of underground storage, in order to stabilize the utilities' firm load, and permit the most profitable year-round use of gas.

Utility Average Hits 22-year High

A NEW 22-year high was reached this month in the average price of public utility shares listed on the New York Stock Exchange. Investors have been steadily seeking shares of these companies for some months, attracted by favorable dividend returns and increasing earnings.

More important is the program of expansion for coming years as managements anticipate additional growth, which is the keynote of various annual reports of the electric and natural gas companies, currently being mailed to stockholders.

In the annual report of the Atlantic City Electric Company, Bayard L. England, president, points out that the continued growth and development of the area served by the company is dramatically linked with the expansion in the Delaware river valley. This company is scheduled to spend $27,000,000 in the next two years. A total of $12,700,000 was spent in 1952. Earnings for the common increased to $1.83 a share in 1952 compared with $1.70 in 1951.

Consumers Power Company, located in Michigan, is another of these growth companies. According to Justin R. Whiting, chairman, the "review of events of

YIELD YARDSTICKS

	Recent	*1952-53 Range High*	*1952-53 Range Low*	*1951 Range High*	*1951 Range Low*
U. S. Long-term Bonds—Taxable	2.85%	2.86%	2.56%	2.74%	2.39%
Utility Bonds—Aaa	3.16	3.16	2.93	3.09	2.64
Aa	3.20	3.21	2.99	3.18	2.70
A	3.33	3.33	3.21	3.32	2.82
Baa	3.55	3.58	3.46	3.58	3.21
Utility Preferred Stocks—High-grade	4.11	4.24	3.94	4.25	3.77
Medium-grade.	4.45	4.71	4.33	4.71	4.19
Utility Common Stocks	5.17	5.59	5.04	6.14	5.62

Latest available Moody indices are used for utility bonds and preferred stocks; Standard & Poor's indices for government bonds and utility common stocks.

the past year is again the story of a dynamic expanding business in a prosperous fast-growing territory. All indications point to its continuance."

Natural gas companies all report growth but due to lagging rate increases and warm weather, have not all reported higher earnings.

CURRENT ELECTRIC UTILITY STATISTICS AND RATIOS

	Unit	Latest Month	Latest 12 Mos.	Per Cent Increase Latest Month	Per Cent Increase Latest 12 Mos.
Operating Statistics (December)					
Output KWH—Total	Bill. KWH	36.5	398.9	10%	8%
Hydro-generated	"	8.2	—	D10	—
Steam-generated	"	28.3	—	18	—
Capacity	Mill. KW	82.1	—	8	8
Peak Load (November)	"	70.2	—	6	—
Fuel Use: Coal	Mill. Tons	10.7	—	11	—
Gas	Mill. MCF	60.5	—	16	—
Oil	Mill. Bbls.	8.5	—	35	—
Coal Stocks	Mill. Tons	41.5	—	8	—
Customers, Sales, Revenues, and Plant (November)					
KWH Sales—Residential	Bill. KWH	5.4	63	10	13
Commercial	"	4.0	48	6	9
Industrial	"	12.4	140	8	5
Total, Incl. Misc.	"	28.8	331	7	6
Customers—Residential	Mill.	31.0	—	4	4
Commercial	"	4.4	—	2	2
Industrial	"	.5	—	3	3
Total	"	38.2	—	3	3
Income Account—Summary (November)					
Revenues—Residential	Bill. $	155	1,802	10	11
Commercial	"	110	1,306	6	8
Industrial	"	139	1,558	9	6
Total, Incl. Misc. Sales	"	444	5,131	8	8
Sales to Other Utilities	"	39	415	9	5
Misc. Income	"	18	222	29	9
Expenditures—Fuel	"	85	901	10	6
Labor	"	92	1,069	11	8
Misc. Expenses	"	70	840	4	4
Depreciation	"	43	502	7	7
Taxes	"	105	1,212	7	8
Interest	"	27	309	12	11
Amortization, etc.	"	—	11	D67	D49
Net Income	"	80	923	14	16
Pref. Div. (Est.)	"	11	126	11	8
Bal. for Common Stock (Est.)	"	69	797	17	19
Com. Div. (Est.)	"	49	567	10	8
Bal. to Sur. (Est.)	"	20	230	100	119
Electric Utility Plant (November)	"	22,496	—	10	—
Reserve for Depreciation and Amort.	"	4,559	—	8	—
Net Electric Utility Plant	"	17,937	—	11	—
Life Insurance Investments (January 1st-February 21st)					
Utility Bonds	"	—	100	—	32
Utility Stocks	"	—	17	—	5
Total	"	—	117	—	31
% of All Investments	"	—	7%	—	11

RECENT FINANCIAL DATA ON GAS COMPANY STOCKS

1951 Rev. (Mill.)			3/5/53 Price About	Dividend Rate	Approx. Yield	Share Earnings* Current Period	% Increase	12 Mos. Ended	Price-Earn. Ratio	Div. Payout
		Pipelines								
$ 7	O	East Tennessee Nat. Gas .	9	—	—	$ .40	—	Dec.	—	—
30	S	Mississippi River Fuel ...	40	$2.20	5.5%	3.57	9%	Dec.	11.2	62%
47	S	Southern Natural Gas ...	31	1.40	4.5	2.35	5	Dec.	13.2	60
76	O	Tenn. Gas Trans.	26	1.40	5.4	1.79	37	Dec.	14.5	78
84	O	Texas East. Trans.	19	1.00	5.3	1.76	D2	Dec.'51	10.8	57
40	O	Texas Gas Trans.	17	1.00	5.9	1.19	D30	Sept.	14.3	84
39	O	Transcontinental Gas	23	1.40	6.1	1.24	D11	Dec.	18.5	113
		Averages			5.5%				13.8	
		Integrated Companies								
98	S	American Natural Gas ..	35	$1.80	5.1%	$2.16	D19%	Sept.	16.2	83%
188	S	Columbia Gas System ...	15	.90	6.0	.83	D22	Dec.	18.1	108
9	O	Commonwealth Gas	17	.25#	5.5#	.87	18	Dec.'51	19.5	29
8	A	Consol. Gas Util.	14	.75	5.4	1.21	D22	Oct.	11.6	62
159	S	Consol. Nat. Gas	57	2.50	4.4	4.19	D26	Dec.	13.6	60
62	S	El Paso Nat. Gas	36	1.60	4.4	2.84	D5	Nov.	12.7	56
27	S	Equitable Gas	24	1.30	5.4	1.82	NC	Oct.	13.2	71
13	O	Interstate Nat. Gas	41	2.50	6.1	3.27	1	Dec.'51	12.5	76
9	O	Kansas-Neb. Nat. Gas ...	23	1.12	4.9	2.11	36	Dec.'51	10.9	53
59	A	Lone Star Gas	28	1.40	5.0	1.55	D12	Dec.	18.1	90
17	S	Montana Dakota Utilities	27	.90	3.3	.90	—	Sept.	—	100
11	O	Mountain Fuel Supply ...	22	.80	3.6	1.23	6	Sept.	17.9	65
42	A	National Fuel Gas	15	.80	5.3	1.38	16	Dec.	10.9	58
3	O	National Gas & Oil	8	.60	7.5	.72	NC	Sept.	11.1	83
40	S	Northern Nat. Gas	43	1.80	4.2	2.57	15	Sept.	16.7	70
25	A	Oklahoma Nat. Gas	43	2.00	4.7	3.61	36	Dec.	11.9	55
19	A	Pacific Pub. Serv.	19	1.00	5.3	1.69	15	Dec.	11.2	59
52	S	Panhandle East. P. L. ...	80	2.50#	3.1	5.00	72	Dec.	16.0	50
8	O	Pennsylvania Gas	18	.80	4.4	1.81	20	Dec.'51	9.9	44
92	S	Peoples Gas Lt. & Coke ..	142	6.00	4.2	8.26	8	Dec.	17.2	73
17	O	Southern Union Gas	24	.80	3.3	1.06	D30	Dec.'51	22.6	76
126	S	United Gas Corp.	29	1.25	4.3	1.40	D8	Sept.	20.7	89
		Averages			4.7%				14.9	
		Retail Distributors								
25	O	Atlanta Gas Light	22	$1.20	5.5%	$2.03	12%	Dec.	10.8	59%
44	S	Brooklyn Union Gas	26	1.50	5.8	1.79	D14	Dec.	14.5	84
22	O	Central Electric & Gas ...	13	.80	6.2	.94	D5	Dec.	13.8	85
3	O	Consumers Gas	26	1.00	3.8	1.47	31	Dec.'51	17.7	68
2	O	Fall River Gas Works ...	27	.60	2.2	1.14	D23	Jan.	23.7	53
5	O	Hartford Gas	38	2.00	5.3	2.39	D11	Dec.'51	15.9	84
9	O	Houston Natural Gas	20	.80	4.0	1.32	D11	July	15.2	61
10	O	Indiana Gas & Water	25	1.40	5.6	1.78	D14	Dec.	14.0	79
5	A	Kings County Lighting ..	9	.60	6.7	.81	D5	Dec.	11.1	74
29	S	Laclede Gas	9	.50	5.6	.95	3	Dec.	9.5	53
19	O	Minneapolis Gas	22	1.15	5.2	1.27	4	Sept.	17.3	87
6	O	Mobile Gas Service	32	1.80	5.6	3.17	12	Sept.	10.1	57
5	O	New Haven Gas Light ...	28	1.60	5.7	1.53	D20	Dec.'51	18.3	105
4	O	North Shore Gas	54	3.40	6.3	4.02	D3	Dec.	13.4	85
124	S	Pacific Lighting	59	3.00	5.1	4.97	48	Dec.	11.9	60
11	O	Portland Gas & Coke ...	21	.90	4.3	1.67	—	Dec.	12.6	54
7	A	Providence Gas	9½	.32	3.4	.36	D37	Dec.'51	—	89
5	O	Seattle Gas	18	.80	4.4	1.24	D4	Sept.	14.5	65
5	O	South Jersey Gas	17	1.00	5.9	.99	13	Dec.	17.2	101
5	O	Springfield Gas Light ...	32	1.80	5.6	1.63	—	Dec.'51	19.6	110
19	S	United Gas Improvement .	37	1.72	4.6	2.19**	9	Dec.	16.9	79
27	S	Washington Gas Light ...	30	1.80	6.0	2.33	6	Dec.	12.9	77
		Averages			5.1%				14.9	
		Canadian								
14	S	International Utilities	29	$1.40	4.8%	$1.88	18%	Sept.	15.4	74%

RECENT FINANCIAL DATA ON TELEPHONE, TRANSIT, AND WATER COMPANIES

1951 Rev. (Mill.)			3/5/53 Price About	Dividend Rate	Approx. Yield	Share Earnings* Current Period	% Increase	12 Mos. Ended	Price-Earn. Ratio	Div. Payout
		Communications Companies								
		Bell System								
$3,369	S	Am. Tel. & Tel. (Cons.)	160	$9.00	5.6%	$11.45**	D3%	Dec.	14.0	79%
28	O	Cin. & Sub. Bell Tel. ..	76	4.50	5.9	4.61	1	Dec.	16.5	98
106	A	Mountain States T. & T.	111	6.00	5.4	6.82	51	Dec.	16.3	88
203	A	New England Tel. & Tel.	113	8.00	7.1	7.25**	D13	Dec.	15.6	110
478	S	Pacific Tel. & Tel.	119	7.00	5.9	8.15**	1	Dec.	14.6	86
62	O	So. New England Tel. .	36	1.80	5.0	1.93	26	Dec.	18.7	93
		Averages			5.8%				16.0	
		Independents								
9	O	Central Telephone	13½	$ .80	5.9%	$1.45	19%	Dec.	9.3	55%
85	S	General Telephone	38	2.20	5.8	3.15	49	Dec.	12.1	70
3	O	Inter-Mountain Tel. ...	11	.80	7.3	.57	17	Dec.'51	—	140
298	S	International Tel. & Tel.	19	.80	4.2	2.60	16	Dec.'51	7.3	31
11	A	Peninsular Telephone ..	45	2.40	5.3	3.84	7	Dec.	11.7	63
13	O	Rochester Telephone ..	15	.80	5.3	1.45	2	June	10.3	55
2	O	Southeastern Telephone	12	.80	6.7	.91	65	Dec.'51	13.2	88
202	S	Western Union Tel. ...	40	3.00	7.5	1.04	D79	Dec.	—	288
		Averages			6.0%				10.7	
		Transit Companies								
14	O	Cincinnati Transit	4	—	—	—	—	—	—	—
9	O	Dallas Ry. & Terminal .	14	$1.40	10.0%	$2.46	40%	Dec.'51	5.7	57%
227	S	Greyhound Corp.	13	1.00	7.7	1.26	6	Sept.	10.3	80
22	O	Los Angeles Transit ..	11	.63	5.7	.79	55	Dec.'51	13.9	80
31	S	National City Lines ...	15	1.00	6.7	1.91	—	Dec.'51	7.9	52
73	O	Philadelphia Transit ...	5	—	—	Deficit	—	Sept.	—	—
7	O	Rochester Transit	4	—	—	1.12	—	Dec.'51	3.6	—
26	O	St. Louis P. S. A	13½	1.40	10.4	.94	169	Dec.	14.4	149
4	O	Syracuse Transit	18	2.00	11.1	1.75	D40	Dec.'51	10.3	116
24	O	United Transit	3½	—	—	.62	29	Oct.	—	—
		Averages			8.6%				9.4	
		Water Companies								
		Holding Companies								
26	S	American Water Works	10	$ .50	5.0%	$ .80	4%	Dec.	12.5	63%
4	O	New York Water Serv.	46	.80	1.7	1.98	3	Sept.	23.2	40
		Operating Companies								
3	O	Bridgeport Hydraulic ..	30	$1.60	5.3%	$1.74	20%	Dec.'51	17.2	92%
8	O	Calif. Water Service ..	32	2.00	6.3	2.49	25	Jan.	12.9	80
2	O	Elizabethtown Water ..	103	5.00	4.9	5.74	D18	Dec.'51	17.9	87
6	S	Hackensack Water	35	1.70	4.9	2.56	D6	Dec.'51	13.7	66
3	O	Jamaica Water Supply .	31	1.80	5.8	3.01	35	Sept.	10.3	60
3	O	New Haven Water	54	3.00	5.6	2.76	D5	Dec.	19.6	109
1	O	Ohio Water Service ...	24	1.50	6.3	1.76	D9	Sept.	13.6	85
5	O	Phila. & Sub. Water ...	54	1.00	1.9	4.69	61	Dec.'51	11.5	21
1	O	Plainfield Union Water.	56	3.00	5.4	4.09	D2	Dec.'51	13.7	73
2	O	San Jose Water	34	2.00	5.9	2.61	12	Nov.	13.0	77
6	O	Scranton-Springbrook .	16	.90	5.6	1.22	30	Sept.	13.1	74
3	O	Southern Calif. Water .	11	.65	5.9	.74	D7	Dec.	14.9	88
3	O	West Va. Water Service	36	1.20	3.3	1.23**	D12	Dec.	—	98
		Averages			5.2%				14.3	

A—American Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. D—Decrease. *Earnings are calculated on present number of shares outstanding, except as otherwise indicated. **On average shares outstanding. # Includes stock dividend. NC—Not comparable. † *Pro forma.*

What Others Think

Has American Socialism "Discovered" Big Business Benefits?

THE November election, like all elections, has been followed by a plethora of theories by political dopesters, poll takers, and sundry "experts" as to what actually happened. Was it Eisenhower's popularity? The Korean war? Communists in the government? Or did a great number of voters simply change their minds about the underlying economic assumptions of the New and Fair deals? That the results were due to a combination of circumstances is probably the safest conclusion, if not the most satisfying. But the argument that the voters have ceased to be impressed, if they ever were, by frantic attacks on "the corporations" and the "selfish designs" of Big Business —a phrase which has come to mean about anything anyone wishes it to mean—is gaining ground among some of those who at one time were in the front ranks of the "Big Business" baiters.

Such erstwhile public ownership enthusiasts as David Lilienthal and Norman Thomas are now giving private enterprise respectful consideration, although Lilienthal's "conversion" (if that is the just word) probably dates before the election. Both are symptomatic, however. A disciple of "people's businesses" during his seventeen years as a New Dealer, TVA Administrator, and Atomic Energy Commission head, Lilienthal is now associated with Lazard Freres & Co,, a New York investment banking firm. He has just written a new book entitled *Big Business: A New Era.* Lilienthal starts out with a frank admission that during his "twenty years of experience, observation, and reflection . . . I had to revise my opinions and prejudgments because they simply did not square with the facts as I found them to be." He has arrived at the conclusion that "Our productive and distributive superiority, our economic fruitfulness, rest upon Bigness. Size is our greatest single functional asset."

LILIENTHAL believes that it is time to discard some of the antiquated provisions of the antitrust laws which he says are based "largely upon prejudice created by abuses long since corrected . . ." He states that against the danger of future abuses of power by Big Business "we either already have adequate public safeguards or know how to fashion new ones as required." Far from discouraging bigness, he would have the government promote "those principles and practices of Bigness that can bring us, in increasing measure, vast social and individual benefits."

Lilienthal thinks Congress should pass a Basic Economic Act which would repeal both the Sherman and Clayton acts, "and all other existing laws, administrative policies, and judicial interpretations of the antitrust laws" in so far as they were inconsistent with the major concern of the new act: "productivity and the ethical and economic distribution of this productivity."

The test of bigness under this measure "would thenceforth be whether the particular aspect of size challenged by the government does in fact further the public interest." In this last respect, Lilienthal's "conversion" can be seen not to be completely wholehearted. While he would abandon the negative approach to Big Business for a positive one, he is still unable to envision an economy which would simply be let alone by the government. As a matter of fact, his legislative proposal would place in the hands of Congress and the executive unlimited power to direct the economy toward any goal conceived by them to be in the "public

interest." The last twenty years have given clews as to what direction this might take. But it is encouraging to note the overdue recognition of the rôle of Big Business in the economy.

NOR is free enterprise the bogey man it used to be for Norman Thomas, ofttimes Socialist candidate for the presidency. Thomas now feels that "the working class is not the Messiah which some of us thought" and urges his fellow Socialists to face up to the awful truth: "The economic arrangements which are good for my neighbor are good for me." Thomas would have American Socialists de-emphasize the Marxian theory of the class struggle and admit up to a point the virtues of a competitive society.

He warns against pressing state ownership too far because "the state under the most democratic theory and practice will become too huge, too cumbersome." Thomas expressed his views in a study entitled *Democratic Socialism—A New Appraisal,* designed to chart the course for American Socialism for the second half of the century. His message in essence: Times have changed and demands for all-out state ownership no longer make sense. He says:

> We have learned that it has been possible, to a degree not anticipated by most earlier Socialists, to impose desirable social controls on privately owned enterprises by the development of social planning, by proper taxation and labor legislation, and by the growth of powerful labor organizations.

Referring to nationalization in Great Britain by the Labor governments, Thomas says it improved the economic status of the workers, but adds:

> But it must be admitted that nationalization of industry in Great Britain and elsewhere has not been the simple solution of all problems which many Socialists in their age of faith had assumed.

With regard to state ownership, Thomas says:

Two things have happened since World War I to lessen somewhat Socialist insistence on state ownership. First, not only the dictatorial Fascist and Communist states have sharpened our fears of the state as the master of human society, but experience with the broadened activities of relatively democratic states like Britain and America has made us more aware than formerly of the dangers of statism—and the economic inadequacies of nationalism—against which we must always be on guard.

THOMAS does not completely write off state ownership, however, or social ownership under democratic control, as he calls it. Natural resources, steel manufacture, credit, and money are fields which require "social" control, he believes. But he acknowledges that "There is not one perfect formula for what ought to be owned under social legislation." The determining factor should be public opinion, which varies from time to time and place to place. Each generation should be allowed to make its own decisions. He refers to "advantages for freedom and enterprise in varieties and ownership.

"There are men," he says, "with a deep-seated desire to work for themselves. They will work harder and be more ingenious in so doing." Thomas believes, with many others, that a completely noncompetitive society would be "dull and stagnant. Within bounds, competition can be made consistent with an over-all principle of mutual aid (among individuals) . . . Socialism should try to stress competition for the laurel wreath rather than the sack of gold . . . But it should recognize that material progress has been furthered by competition for material reward."

As for wages, he states:

> It is of primary importance in Socialist plans and action that the least well paid of our workers should come to understand that the whole answer to the problem of poverty does not lie in any formula devoted simply to a more

equitable sharing of the wealth. Even in relatively rich America, the answer to poverty depends also upon more efficient production.

THOSE economic and social reformers who have long used Big Business as the whipping boy for all our ills might glance at a forthcoming study of the Brookings Institution—*Big Business in a Competitive Society*. A summary of the study, by economists A. D. H. Kaplan and Alfred E. Kahn, appeared in the February issue of *Fortune* magazine. The report explodes some familiar arguments against Big Business: the concentration of economic power into fewer and fewer hands, the monopolistic and exploitative nature of giant corporations, the resulting decline of competition, the threat this represents not only to the economy but to democracy itself.

The campaign against "bigness" began in earnest some fifty years ago under Theodore Roosevelt's administration and was the favorite issue of the LaFollette progressives. One can find considerable American history textbook authority for the proposal that Roosevelt was hypocritical and insincere in dealing with the trusts. (In spite of an antitrust attitude, large-scale combinations multiplied under his administration.) The new Brookings study, however, lends support to the contention that Theodore Roosevelt may have been wiser than some of his progressive friends. It seems clear from the evidence presented that American industry would have been seriously crippled.

An illustration in the study classifies 100 of the largest corporations in five test periods: 1909, 1919, 1929, 1935, and 1948. While in all five periods there were always 100 "largest" corporations, they were not always the same companies. Some declined permanently; others declined for a certain period, then climbed back to the top. Of the original 100 largest corporations in 1909, only 36 were so classified in 1948. The study continued:

> . . . The companies that have grown are those that have been able to convert technological progress into customer preferences. Few that have stuck to their traditional product lines —and none have retained traditional methods—have grown in stature either within the family of the 100 largest or in the economy as a whole. There is no reason to believe that those now at the top will stay there except as they keep fully abreast in the race of innovation; *i.e.*, of competition.

In other words, competition has become a contest between relatively smaller groups of stronger contestants. While the report did not go into the utility field, its conclusions can be applied, particularly to the telephone industry, which has seen thousands of farm mutual telephone companies, operating in 1920, virtually disappear. Those remaining have survived by becoming larger and more efficient units. Similar developments in the electric industry were complicated by Federal government participation in the Holding Company Act, but the basic trend was undoubtedly the same.

THE authors of the Brookings study state that its purpose has been to contribute a balanced view of the rôle and net contribution of Big Business. They admit there is no scientific way of reaching a verdict and that the interpretation can only be intuitive in method and tentative in conclusion:

> In our economy Big Business undertakes the major rôle of co-ordinating individual efforts and resources into collective achievement. This is a function that must be undertaken under modern technology, whether under private enterprise or by the state. Big Business represents an institutional compromise that is one of the most distinctive features of American society.

The conclusion is inescapable that both the "bigs" and the "littles" have their proper place and their particular tasks to perform in the American economy. This is apparently just as true for American business in general as it is for the telephone business.

The March of Events

In General

Tax Amortization Hearings

CONSIDERABLE interest has been building up concerning the hearings scheduled by the FPC (slated to begin on March 18th) on proper treatment of the "fast tax" depreciation certificates now held by quite a few gas and electric utility companies. A number of state commissions already have passed on this question, including several which handed down rather definite rulings—Michigan, Georgia, and Washington, to name three. Several have had it under consideration —New York, Missouri, and Idaho. Several have indicated, less formally, their particular attitudes. But what the FPC does will naturally exert considerable influence.

And that is what some of the utility tax certificate holders are rather apprehensive about. Informally, there is speculation that if the FPC should hand down burdensome restrictions regarding the so-called "tax savings" during the 60-month amortization period — whether for accounting or other regulatory purposes— some utilities holding certificates for plant expansion under the defense program may simply refuse to exercise their options under the Internal Revenue Act for the accelerated depreciation for tax purposes.

Both gas and electric company spokesmen were slated to show up at the March 18th hearings. The hearings were called to determine "what rules, if any, should be promulgated by the commission with respect to the treatment of Federal income taxes, for accounting or rate-making purposes, or both, under either the Natural Gas Act or the Federal Power Act, or both."

Roanoke Decision Hailed

THE Federal Power Commission on March 16th won a 6-to-3 decision from the U. S. Supreme Court in its long battle with the Interior Department over issuing hydroelectric licenses. The decision in the so-called Roanoke Rapids Case will permit the Virginia Electric & Power Company to proceed with construction interrupted by the long litigation. There was speculation that the Interior Department might withdraw opposition to an FPC license issued in a parallel case involving a dam on the Kings river in California.

Justice Frankfurter wrote the majority opinion, while Justice Douglas wrote the dissenting opinion.

Indiana

Transit Bill Gets Final Passage

A BILL to prohibit transit rate increases without advance public notice was given final passage by the state legislature recently and sent to the governor for signature.

Affecting any transportation company operating entirely within one county, the bill provides that whenever such a company files a petition with the state public service commission asking increased rates, it must also publish notice of filing the petition plus the schedule of increased rates within two days in a newspaper in each city or town affected.

Governor Signs Utility Bills

GOVERNOR Craig recently signed into state law a bill permitting directors of a Rural Electric Membership Corporation to renew or make a mortgage to the Federal government without holding a meeting of the corporation's entire membership.

Also signed was another measure which provides that when city or town boundary is extended, the utility serving that municipality may acquire by purchase or condemnation property of any Rural Electric Membership Corporation located in the newly annexed section of the city or town.

Kentucky

REA Co-op Ordered to Show Cause

THE state public service commission recently directed an REA co-op to show how it would be affected by construction of a power network for the new atomic energy plant at Portsmouth, Ohio.

At the same time, the commission's chairman, Robert M. Coleman, took no action on East Kentucky Rural Electric Co-operative's motion that the commission dismiss Ohio Valley Electric Corporation's application to run two transmission lines across northern Kentucky to carry power to the Pike county, Ohio, project.

Ohio Valley, an organization of private utility companies in Michigan, Indiana, Kentucky, Ohio, and Pennsylvania, has a contract with the Atomic Energy Commission to supply power to the proposed new Portsmouth plant.

Kentucky members of Ohio Valley are Louisville Gas & Electric Company and Kentucky Utilities Company. Both utilities sell power to East Kentucky.

Massachusetts

Transit Legislation Recommended

ENACTMENT of legislation to speed up fare increase petitions of transit companies and to authorize municipalities to subsidize "marginal" transit operations which might otherwise be abandoned was recommended this month by a special state legislative study commission.

Finding the public transport industry "in a precarious position," the commission declared that a "more sympathetic attitude" should be taken by state and other officials to help the industry survive.

The commission noted that the Boston Metropolitan Transit Authority's rapid transit system, even though operated by the state, had a $10,000,000 deficit last year.

Minnesota

City Loses Round

THE city of Minneapolis on March 6th lost the first round in its lawsuit to have streetcar fares cut back to 15 cents cash or six tokens for 90 cents. The fare is now 20 cents cash or six tokens for $1. District Judge D. E. LaBelle denied a motion by the city to halt operation of the emergency fare increase in effect since an order was issued December 23rd by the state railroad and warehouse commission.

The court's recent order will have no effect on trolley and bus riders, who will continue paying the 20-cent cash fare or six tokens for $1.

As part of Judge LaBelle's order the

Minneapolis Street Railway Company must continue giving receipts for cash fares and token purchases in event a lower fare is set later. The judge's ruling was an intermediate one and did not affect the main part of the lawsuit.

Mississippi

Tax Ruled Unconstitutional

IN a reversal of a stand it had taken previously, the state supreme court early this month handed down a 5-to-4 decision ruling unconstitutional the state's privilege tax on interstate gas pipelines. The court held the tax violated the commerce clause of the Federal Constitution. The tax affected eleven interstate gas lines that cross Mississippi without serving the state.

Montana

Governor's Veto Sustained

MONTANA'S house of representatives recently sustained Governor Aronson's veto of a bill which would have required any person moving such structures as a house, building, or derrick to pay for any utility wires or poles cut down to clear the way.

The governor said the measure seemed "to be inequitable," because it "shifts the burden of costs" from the "utility companies to the individual home, farm, and ranch owner." He said railroads are required to maintain crossings for public use, and "the same principle applies for power and telephone lines."

Rhode Island

Gas Company Granted Rate Rise

THE Providence Gas Company early this month was granted a 9 per cent permanent increase in its rates when Thomas A. Kennelly, state public utility administrator, reversed his order of last summer turning down a company application.

The state supreme court ordered Kennelly to reconsider his refusal to grant a permanent increase of 18 per cent and an emergency increase of 9 per cent. The application was made September 5, 1951.

When the application for higher rates was turned down last July, Kennelly said he acted in the belief natural gas would be available in Rhode Island in late 1952. Since this would be cheaper for the company, he said, the rate increases should be delayed until that time. The company appealed the decision to the state supreme court.

Virginia

City to Raise Gas Rates

THE Richmond city council recently approved rate increases to put the gas utility on a profit basis. Utilities Director J. Edward Metzger said gas bills going out after April 1st would carry the new rates.

Bills charging the higher natural gas rates would be less than $1 a month for 34,000 of the 43,000 gas consumers, Metzger said. But 7,000 gas-heating customers would carry most of the burden because the rates in their bracket went up from 9 cents to 12 cents for each 100 cubic feet.

Progress of Regulation

Accounting Procedures Prescribed for Rapid Amortization of Emergency Power Facilities

THE North Carolina commission issued instructions to a power company as to the procedures to be followed with respect to accounting for emergency facilities. The company was authorized to:

1. Amortize for Federal income tax purposes over a period of sixty months that portion of the cost of such facilities attributable to defense purposes;

2. Provide on its books of account for depreciation on properties covered by necessity certificates at rates consistent with those for like property not covered by necessity certificates and, during the period of amortization of such emergency facilities, charge to the current provision for Federal Taxes on Income in operating expenses and concurrently credit "Earned Surplus Restricted for Future Federal Taxes on Income," amounts equal to the reduction in Federal taxes on income resulting from the accelerated amortization of such facilities for Federal income tax purposes and after expiration of the effective amortization period, and until "Earned Surplus Restricted for Future Federal Taxes on Income" applicable to specific facilities is exhausted or such facilities are retired from service, charge "Earned Surplus Restricted for Future Federal Taxes on Income" and credit the current provision for Federal Taxes on Income with amounts equal to the increase in Federal Taxes on Income resulting from depreciation on the emergency facilities no longer being available for Federal income tax purposes, said charges and credits to the current provision for Federal Taxes on Income in operating expenses shall be made to a subdivision of Account 507, Taxes.

The commission indicated that as to any other facilities for which the company obtained certificates of necessity under § 124A of the Internal Revenue Code the same procedures should be followed.

The company was given the right to discontinue the rapid amortization at its pleasure. In the event that it elected to break off the short-term amortization before full depreciation had been taken, the commission said, the company should exclude for tax purposes the amounts allowable under the necessity certificates and return to a normal depreciation allowance. *Ex Parte Carolina Power & Light Co. Docket No. E-2, Sub 29, January 26, 1953.*

Court Action Improper When Telephone Company Fails to Publish Directory

THE Illinois Appellate Court affirmed a lower court decision dismissing a representative action by subscribers seeking damages against a telephone company for failure to publish directories.

The court ruled that the relief sought

by the subscribers was essentially reparations and not consequential damages. Reparation matters are within the province of the commission and not the courts.

A representative action, the court continued, was not proper because the subscribers were served by different exchanges, with different classes of service and rates for varying periods, and clearly were not similarly situated so as to give each the same right to recover damages from the telephone company to the same degree. *Burke v. Illinois Bell Teleph. Co. 109 NE2d 358.*

Evidence of Field Price of Gas Admitted in FPC Rate Proceeding

THE Federal Power Commission denied an appeal from rulings of a presiding examiner admitting, in a rate proceeding, evidence pertaining to the weighted average field prices and the so-called fair field price of natural gas. The commission concluded that the evidence should remain in the record for consideration in the ultimate decision of the proceedings. But it added:

> We desire to make it clear, however, that at this time we decide no more than that the evidence should remain in the record. This evidence, like all other in the record, must be evaluated and weighed in the light of the provisions of the Natural Gas Act, at the time of final decision of the issues raised and the arguments made by the parties.

Chairman Buchanan and Commissioner Doty dissented. Chairman Buchanan said that the question posed before the commission was precisely the same question that was before it in Pittsburgh *v.* Pittsburgh & W. V. Gas Co. (1948) 76 PUR NS 65. In that proceeding the commission had upheld the decision of a presiding examiner rejecting evidence as to field prices of natural gas. *Re Panhandle Eastern Pipe Line Co. Docket Nos. G-1116 et al. February 9, 1953.*

Sale of Transit Property by Subsidiary for Less Than Net Book Value Approved

THE Securities and Exchange Commission approved the sale, by a nonutility subsidiary, of its passenger transportation properties to a nonaffiliated transit company, although the sale would result in a substantial book loss and earned surplus deficit. The commission's experience with sales of transit properties indicated that such properties quite commonly are sold for substantially less than net original cost, particularly where a considerable portion of the facilities are streetcars and tracks which are likely to be retired and replaced with busses or trackless trolleys.

Numerous efforts had been made during the past six years to dispose of these transit facilities but no firm purchase offer except the present offer had been received. Negotiations for the present sale were carried on through arm's-length bargaining. The purchasers were in no way associated with any of the companies in the holding company system or with any officer or director of any such companies. The commission concluded that the consideration was fair and reasonable in view of the fact that the sale reflected the best, and in fact the only, offer which the management of the company had been able to obtain.

It was claimed that the commission had no jurisdiction over the sale because it had not ordered the disposition of the properties and the sale had not been proposed as a plan under § 11 (e) of the Holding Company Act. The commission rejected this claim and assumed jurisdiction. The passenger transportation business had no operational relationship to

the utility business of the holding company system. Accordingly, the commission held the proposed divestment of the transportation properties and the related transactions constituted a program within the meaning of § 11 (e) for accomplishing a result required by § 11 (b).

A stockholder of the holding company claimed that it would be in the best interests of the holding company's stockholders if the capital stock of the subsidiary were to be distributed to them in lieu of the proposed sale. The commission held that since it had not found the proposed sale price to be unreasonable, there could be no valid objection to the sale. There were no problems of allocation involved in the divestment. Therefore, the choice of method was held to be basically one of business judgment with respect to what course was most likely to prove profitable to the holding company's stockholders. The Holding Company Act leaves such a choice to management in the absence of an indication that the choice of method of compliance with the act is so manifestly contrary to the interest of the stockholders as to warrant the commission's substituting its judgment for theirs.

Apart from the adequacy of the consideration to be received, there were other immediate benefits which would inure to the stockholders. The holding company and its subsidiary companies proposed to join in the filing of a consolidated Federal income tax return. They would be entitled to tax reductions by reason of the loss realized from the sale of the passenger transit facilities. These reductions would have the effect of making cash available to the holding company system. Thus both the holding company and its subsidiary would, in effect, realize additional amounts as a result of the proposed sale, although the commission's conclusions as to the reasonableness of the consideration to be received were admittedly arrived at without regard to the tax savings. *Re Milwaukee Electric Railway & Transport Co. et al. File No. 70-2948, Release No. 11641, December 24, 1952.*

Should Parent Company's Tax Savings on Consolidated Return Benefit Local Company?

THE Maryland commission, in determining temporary rates for a telephone company, gave consideration to savings which would have been effected by the company under an appropriate equity and debt capital structure. The rates approved permitted the company to earn a return of about 5.8 per cent on its rate base.

A claim by people's counsel and a protesting municipality that tax savings effected by the company's parent in filing a consolidated return should result in savings to the local company was rejected by the commission because of the difficulty of requiring the parent to pay the local company any portion of the savings. Commissioner Davis, in a dissenting opinion, conceded the majority's position but suggested this alternative:

> If the parent company refuses to give its subsidiary any part of the benefits which it receives by virtue of a consolidated return, it would be entirely proper for this commission to fix such a rate of return to the subsidiary as would withhold from the parent the full benefit of a return on its stock to which it would otherwise be entitled.

Re Chesapeake & P. Teleph. Co. Case No. 5257, Order No. 49685, January 23, 1953.

Service Obligation Not Affected Solely by Profit Factor

THE New York commission authorized an electric company to exercise a franchise in a town entirely surrounded by the company's existing service terri-

tory. The town was the only portion of the area in which there was not an electric franchise and it would not be economically feasible for any other company to serve the territory.

It would be necessary for the company to erect a distribution system as well as to strengthen its existing feeders to the boundary of the town. Much of the latter work would be desirable to give existing customers good service. The commission said that considering the investment and maintenance, it might be argued, at least in the initial period, that the exercise of the franchise would not result in a productive source of revenue. The availability of electricity would, however, unquestionably aid in area development.

The commission held that the question of economic feasibility of service in a specific locality considered by itself should not be controlling. The commission said:

> We think that any electric utility has the responsibility of serving customers in its own territory or territory which logically belongs to it, as in the present case where the town is entirely surrounded by the franchise territory of Niagara Mohawk. Prospective utility customers should not be given or refused service solely because of the judgment of utility officials as to whether prospective utility business will or will not, judged by itself, be profitable. This state is rightfully proud of a policy which was first adopted by the legislature in 1930 of aiding rural areas in obtaining electricity from privately owned utilities.

Re Niagara Mohawk Power Corp. Case 16077, February 10, 1953.

Natural Gas Companies Merge to Effect Savings and Rate Reductions

THE merger of two natural gas companies was authorized by the New York commission where it would result in some decreases of current gas bills and tend to prevent further increases even if the Federal Power Commission should permit increased rates by wholesale suppliers. The merger presented other advantages, such as the ability of the larger company to finance on more advantageous terms and the savings which would result from removal of duplication of management.

The increased use of gas coming from sources outside of the state made it increasingly desirable, in the interest of continuity of supply, for the pooling of gas resources over the broadest possible territory. The combination of the gas resources of these two companies afforded the prospect of greater assurance of supply.

Under the present type of rate prescribed by the Federal Power Commission, the combination of billings, plus the ability to reduce the demand charge by reason of the greater diversity of the territory and the use of combined stand-by facilities for peak shaving, afforded an opportunity to reduce the price paid by a combined company below that which would be paid by each as a separate entity. *Re Rockland Gas Co., Inc. Case 15786, December 17, 1952.*

Original Cost Preferred to Present Fair Value Rate Base

THE Wyoming commission allowed a telephone company to make higher rates effective. One of the specific changes approved in the tariff was an increase in the pay station rate from 5 to 10 cents.

In an earlier proceeding (89 PUR NS 341, February 24, 1951), the commission had set forth its views on the company's rates in some detail and in the instant proceeding recommended a rereading of the earlier opinion.

The commission indicated that when rates believed to be inadequate at the time of their approval become inadequate in a short period, the company's additional revenue requirements are best provided for by a change in the rate of return rather than by the adoption of a different rate base. The company's contention that a rate base should be adopted which gives some recognition to present value, or the fair value of the property as shown in an engineering study introduced in evidence, was rejected by the commission. It adopted an average net investment rate base.

License contract payments to the company's parent of one per cent of gross revenues and payments to an affiliated supplier for equipment were allowed as operating expenses.

The company's estimate of future revenues was accepted when no evidence to the contrary was introduced. The commission noted that in the past it had accepted company estimates and in retrospect appeared justified in doing so. The estimates were based on the present scale of wages, taxes, and prices and reflected fully the results of a newly installed dial operation.

The new rates would provide a return of 6.89 per cent, which the commission considered adequate to service the company's debt, pay reasonable dividends, and provide a reasonable amount for supplies.

A hypothetical capital structure consisting of 38 per cent debt and 62 per cent equity capital was recommended for the company's consideration. *Re Mountain States Teleph. & Teleg. Co. Docket No. 9222, January 12, 1953.*

Reproduction Cost Consideration Not Mandatory

A DETERMINATION of a water company's rate base predicated on reproduction cost new, says the Connecticut commission, is not mandatory. There is no provision of law requiring adoption of such method.

The result reached, not the method employed, is controlling.

The company proposed to charge meter rate customers one rate and fixture rate customers another rate until conversion to meters had been accomplished. The proposal was disallowed as being discriminatory. The fixture rate customers would receive the benefit of unlimited consumption of water.

An amended schedule of rates was approved. Rates under the amendment were 25 per cent greater for fixture patrons but would correspond approximately to meter rates. The commission observed that revenue from fixture rate patrons converted to meters was 10 per cent greater than from meter rates, due to the fact that the level of meter rates was lower, and a 10 per cent increase in fixture rates would bring such rates up to meter rates. This would encourage metering and was not discriminatory.

A proposal to lower the percentage contribution of fire protection service was denied. To lower the existing 6.1 per cent contribution to the company's gross revenues, said the commission, would be contrary to sound rate-making principles as such a contribution would be too low.

Modified rates that would enable the company to meet existing security obligations, attract additional capital on fair and reasonable terms, and yield a return of 5.11 per cent were considered fair and reasonable. *Re Seymour Water Co. Docket No. 8721, December 31, 1952.*

Other Important Rulings

THE Oregon Supreme Court held that a commission finding, which stated generally that rates prescribed for a railroad's shipment of logs were sufficient, did not sustain the rate order where no detailed findings as to the allocation of

the railroad's indirect costs to its interstate business, which consisted almost exclusively of lumber shipments, were made to its intrastate business, which consisted almost exclusively of log shipments. *Valley & Wiletz R. Co. v. Flagg et al. (1952) 247 P2d 639.*

The New York commission authorized an electric company, which had acquired the works and system of another electric company, to exercise a franchise in the territory formerly served by the latter company where it resulted in a material reduction of electric rates. *Re Niagara Mohawk Power Corp. Case 16064, February 10, 1953.*

Authority to abandon railroad passenger service and passenger stations on a sparsely used branch line was granted by the Massachusetts Department of Public Utilities, even though freight operations were profitable, because the burden on freight shippers through increased rates based on increased costs was sufficiently heavy to entitle shippers to relief from subsidization of passenger service where, as here, there would be no substantial prejudice to public interest. *Re Boston & A. R. Co. et al. DPU 10200, January 22, 1953.*

The New Jersey Board of Public Utility Commissioners dismissed a petition for an order requiring a railroad to remove an obstruction preventing the use of what it claimed to be a private crossing at grade, maintained by it solely for access to its property, on the ground that the question of whether or not the private crossing has, through adverse user, become public can be determined only by a court of competent jurisdiction. *Pequannock v. Erie R. Co. Docket No. 7211, February 4, 1953.*

Titles and Index

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TITLES

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Re Union Light, Heat & Power Company

Cases Nos. 2001, 2002
January 3, 1953

APPLICATION *for authority to increase gas and electric rates; authority denied.*

Revenues, § 5 — Account transferred to parent company.

1. Revenues incident to service pursuant to an account which an electric company had transferred to its parent corporation were included in the electric company's revenues for rate-making purposes where the service, since the transfer of the account, had been rendered through substantially the same facilities (leased to the parent company for the purpose of this service), where the electric company was owned substantially by the parent company and the principal officers of the two corporations were identical, where the customer was located in an area otherwise served entirely by the electric company, and where the parent company served no other customer in that area, p. 37.

Revenues, § 10 — Interest during construction.

2. Interest charged during construction and later capitalized in plant accounts was included in a gas and electric company's revenues for rate-making purposes, where the company's various rate bases had included plant under construction, p. 38.

Expenses, § 39 — Gas company — Cost of supply.

3. A gas company's increased cost of gas purchased, pending final determination of the reasonableness of wholesale rates by the Federal Power Commission, was allowed as an operating expense where the company was actually paying the increased wholesale rates for purchased gas and the rates were in effect under bond and subject to refund, p. 38.

Expenses, § 91 — Rate case expenses — Unsuccessful litigation.

4. Rate case expenses should be borne by the stockholders rather than the ratepayers where proposed rates have not been justified and there is no merit for a request for a rate increase, particularly where claimed rate case expenses are completely out of proportion with the other factors in the case, p. 38.

Expenses, § 114 — Income tax.

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gas and electric company for rate-making purposes on the theory that such contributions should be made on behalf of the owners or stockholders of the company rather than the ratepayers, p. 40.

Valuation, § 296 — Working capital allowance — Delayed payment factor.

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8. No allowance should be made for cash working capital when a company accrues large sums for the payment of taxes in advance of their due date and such sums are available for the general conduct of its business, p. 45.

APPEARANCES:

For the applicant: Floyd C. Williams, Peck, Shaffer & Williams, Cincinnati, Ohio, General Counsel; Calvin S. Weakley, Cincinnati, Ohio; Walter E. Beckjord, Cincinnati, Ohio; Stephens L. Blakely, Blakely, Moore & Blakely, Covington, Counsel.

For the protestants: Hon. E. H. Henry, City Solicitor, Covington; Hon. R. S. Bryson, Assistant City Solicitor, Covington; Hon. Charles Whittle, for Northern Kentucky Utilities District, Brownsville; Frank V. Benton, Sr., Benton, Benton & Luedeke, General Counsel for Newport Steel Corporation; James M. Honaker, Special Counsel for Newport Steel Corporation, Frankfort; Stanley L. Chrisman, City Solicitor, city of Covington; Fred Warren, City Solicitor, city of Newport; Sylvester J. Wagner, Kentucky State Senator, 24th District; Morris W. Weintraub, Attorney and Member of House of Representatives, 63rd District; Honorable Fred Fox.

For the Commission: J. Gardner Ashcraft, Assistant Attorney General.

By the COMMISSION: This is a proceeding before the Public Service Commission by the Union Light, Heat and Power Company (hereinafter referred to as Union) to determine whether the present or proposed rates of Union are fair, just, and reasonable. Union is substantially a wholly owned subsidiary of Cincinnati Gas and Electric Company with the latter company holding over 98 per cent of Union's outstanding capital stock. The company renders electric service in Kenton, Campbell, Boone, Grant, and Pendleton counties and gas service in Kenton, Campbell, and Boone counties, all in northern Kentucky.

This company has been before the Commission in this proceeding for over three years. In 1949, the Commission commenced negotiations with Union looking toward a possible reduction in the rates which they were charging for gas and electric service. While these negotiations were still pending, Union filed what it termed a "Notice to the Commission of Adjustment of Rates" for both its gas and electric service. This notice provided for substantial increases to be made effective upon approval of this Commission.

On the same date on which this application was filed, January 1, 1950, the company filed a motion that it be granted six months in which to prepare

for hearings on this matter. This motion was denied.

Following the denial of its motion, Union filed a petition for rehearing and this was granted by order dated March 22, 1950. Following the rehearing, the Commission set aside its order of February 15, 1950, and entered an order directing the company to proceed to a hearing on June 6, 1950. The Commission further provided that:

". . . from an examination and study of the monthly and annual reports filed by the Union Light, Heat and Power Company with this Commission, it appears that there may be reasonable grounds for an investigation of the reasonableness of its present rates and tariffs.

"It is, therefore, *ordered* that an investigation be entered into of the rates, rulings, and practices of the Union Light, Heat and Power Company and, that a public hearing be held relative thereto in the offices of the Commission in the city of Frankfort, Kentucky, on the 6th day of June, 1950, at 10:30 A.M., at which time and place any person interested may appear and present such evidence as may be proper in the premises. . . .

"Notice is also given to all the municipalities, cities, and towns in the state of Kentucky receiving gas or electric service from this company. And, proceedings on this show cause order and also the application of the company to increase its rates are hereby set and continued for a hearing at the hearing room of this Commission upon the date above set out to wit: June 6, 1950, at 10:30 A.M."

Following these hearings at which time the company presented its evidence, the case lay dormant in the files of the Commission and the record fails to disclose any request for further action by any party to this proceeding. The case was not revived until more than two years after its original filing when the company filed a supplement to its application and notice to the Commission of adjustment of rates on February 5, 1952.

It is interesting to note that during this period the company alleges to have sustained substantial increases brought about by the general rise in the cost of living, but the notice filed on February 5, 1952, requests the same adjustments in rates as proposed in the filing two years earlier. Indeed, the notice states that the following increases occurred:

"1. Since January, 1950, when proposed rates were filed, wage rates have increased about 9 per cent and negotiations for new wage rates are imminent.

"2. Effective January 1, 1952, the effective Federal income tax rates resulting from rates prescribed in the 1951 Revenue Act will be over 35 per cent higher than the effective rate in 1949.

"3. On February 17, 1952, company's cost of natural gas supplied is to be increased in an amount of approximately $600,000 or 23 per cent on an annual basis, due to higher rates filed with FPC by suppliers.

"4. Applicant's investment in gas facilities has increased $778,000 since January 1, 1950.

"5. Although gross gas revenues have increased since 1949, net operating revenue will be substantially less because of the increase in cost of gas purchased, higher tax rates, higher

labor cost, etc., despite the fact that $778,000 more has been invested in plant, with the result that the company is earning no return on this additional investment.

"6. Applicant's investment in electric facilities has increased $2,300,000 since January 1, 1950.

"7. Although gross electric revenues have increased since 1949, there will be practically no increase in net operating revenue (even though the Federal electrical energy tax is eliminated) because of the increases in Federal income tax rates, higher labor cost, etc., despite the fact that $2,300,000 more has been invested in plant, with the result that the company is earning practically no return on this additional investment."

The company in its notice departed from the method of procedure used in its original filing and instead of making the rates effective after approval by the Commission now proposed to make the increased rates applicable for service rendered after March 1, 1952. By order dated February 18, 1952, the Commission suspended the proposed rates for a period of 120 days but provided therein that if the company chose to make their rates effective in spite of the suspension, as they then had a right to do, that they should post bonds in the total amount of $350,000. These bonds were subsequently filed and approved.

On February 26, 1952, an individual consumer of Union Company filed a motion to prohibit Union from collecting the increased rates. The basis for this motion was that Union had failed to comply with the legal rules and regulations of the Commission in its notice of February 5th. After the hearing on this motion, the Commission concluded that the rules and regulations had not been complied with and the order of February 18th authorizing the company to make their rates effective was set aside.

The company then refiled its notice on March 5, 1952. Prior to this filing, Senate Bill 131, now Chap 46 of the Legislative Acts of Kentucky amending §§ of 278 Kentucky Revised Statutes, was enacted by the general assembly and became law on March 5, 1952, pursuant to the emergency clause contained therein. This bill provides, in so far as it is pertinent here, that the Commission has the power to suspend rates absolutely for a period of five months with no right of the utility to make those rates effective under bond.

The Commission took the position that the filing of March 5th was governed by the law applicable at that time, i.e., the aforementioned Chap 46 and suspended the proposed rates of Union for five months from and after March 27, 1952, the date when they would overwise have become effective. Union appealed from this order as well as from the order of February 29th in which the Commission held that Union had failed to comply with the rules and regulations of the Commission. The legality of the Commission's action in these two instances is now pending before the court of appeals. Notwithstanding the orders of the Commission Union has been collecting its proposed rates since March 1, 1952.

Following these developments, this matter came on for hearing on the merits of the issues involved on April 2, 1952. Subsequent hearings were

held on June 25th, September 23rd, December 10th, and December 30th.

The Newport Steel Corporation and the Northern Kentucky Utilities District representing the patrons in the cities and towns of northern Kentucky intervened and actively participated in these proceedings.

Test Period

At the hearing on April 2, 1952, Union presented evidence relative to its operations for the calendar year 1951. Numerous requests for additional information by the staff of the Commission were furnished and the staff and also certain protestants presented evidence relative to Union's operations during the calendar year 1951. At the hearing held on December 10, 1952, Union sought to introduce certain additional information relative to its operations for the twelve months ending October 31, 1952. Although this evidence was admitted to the record and has been considered by the Commission, it was found to be not in sufficient detail for the Commission to use it as the sole period for testing the rates sought. The latest monthly report of the company, the one for October, 1952, was admitted in evidence and considered by the Commission in determining the reasonableness of the rates.

For this reason the Commission will use the latest complete period available adjusting it to reflect certain known changes in the company's operations that occurred subsequent to that time. The calendar year 1951 will therefore be used to test the reasonableness of the rates sought.

Operating Revenues

During the year 1951, Union's gross operating revenues were in the amount of $4,500,707 for its gas operations and $5,080,927 for its electric operations.

[1] The record discloses, however, that in October, 1950, the electric account of the Newport Steel Corporation, a large industrial customer of Union's located in Kentucky, was transferred to the parent company, Cincinnati Gas and Electric Company. Service has been rendered subsequently through substantially the same facilities that service had been obtained from Union, these facilities being leased to the parent company for this purpose.

The Commission's staff witness estimated that had this customer been served by Union during 1951, Union's gross revenues would have been increased by some $2,128,475, which, with related increase in operating expense of some $2,065,036, would have produced an annual increase in net operating revenues of some $63,439.

It also appears that Union is owned substantially by the Cincinnati Company and it appears that the principal officers, at least, of the two corporations are identical. It is also significant to note that the transfer of this large customer, in fact, Union's largest single customer, to the parent corporation came coincident with the filing of this rate case. This customer is located in Kentucky, in the area otherwise served entirely by Union. The Cincinnati Company serves no other customer, than the Union, in Kentucky.

For these reasons and because of the corporate relationship of the two utilities the Commission will consider, for purposes of review of Union's operations for rate-making purposes, that

regardless of its nominal disposition, this customer is rightfully Union's customer and the revenues and expenses incident to providing the service should be incorporated with Union's.

[2] Another item that must be considered is interest charged during construction. This is the interest that the utility charges on its investment in plant under construction and which is later capitalized in the plant accounts. Inasmuch as the various rate bases considered have included plant under construction, this item will be considered as an income item in testing the proposed rates. For the test period, this item was $5,600, of which $4,700 was assignable to the electric operations, and the balance to the water operations.

The operating revenue items as considered by the Commission may be summarized as follows:

	Gas Operations	Electric Operations
Operating Revenues	$4,500,707	$5,080,927
Newport Steel Revenues	.....	2,128,475
Interest During Construction	.....	4,700
Total	$4,500,707	$7,214,102

Operating Expenses

For the calendar year 1951, Union's operating expenses were in the amounts of $4,079,168 for its gas operations and $4,656,689 for its electric operations. Inasmuch as rates are being considered for future operations of the utility, it is necessary to make certain adjustments to these actual operating expenses in order to review them in the light of current conditions.

Certain of the adjustments suggested by Union in its testimony do not appear to be in controversy. These are increased wages not fully reflected in the test period which increase the expenses for gas operations in the amount of $58,274 and for electric operations in the amount of $84,912, postage for mailing bills which increases gas expenses some $3,521, and electric expenses some $3,708, and a saving of some $108,686 in electric expenses due to elimination of the Federal electrical energy tax. The Commission is of the opinion that these adjustments are proper.

[3] Union's cost of gas purchased is subject to an estimated annual increase of $423,474 pending final determination by the Federal Power Commission. Inasmuch as Union is now paying these increased rates for its purchased gas, the rates being in effect under bond and subject to refund, the Commission will consider this increased cost. The rates for gas service as found to be fair, just, and reasonable in this opinion will be prescribed as interim rates, to be subject to revision in the event a refund is finally ordered by the Federal Power Commission.

[4] Union suggested an adjustment to reflect increased regulatory Commission expense based upon the full assessment permitted by the Kentucky Statutes. The Commission is of the opinion that the regulatory Commission expense actually assessed against Union on its 1951 gross revenues should be related to the test period under consideration. This assessment resulted in an increase in gas expense of some $1,160 and a decrease in electric expense of some $57.

The company claims as an operating expense the cost of preparing and presenting this rate case in the amount

of an estimated $210,404. The Commission is of the opinion that all but $75,000 of this amount should be disallowed. A number of reasons call for this decision.

Union has failed to justify its need for higher rates. Indeed, only after three years of sustaining increased labor and gas supply costs, income tax increases from 38 per cent to 52 per cent, and other incidental increases, is it able to justify the rates which it was charging prior to the filing of January 4, 1950. There is ample authority to support the proposition that when proposed rates have not been justified, where there is no merit in the request, then rate case expense should be borne by the stockholders and not the ratepayers. Mamaroneck v. New York Interurban Water Co. (1925) 126 Misc 382, 212 NY Supp 639; Peoples Nat. Gas Co. v. Public Utility Commission (1943) 153 Pa Super Ct 475, 51 PUR NS 129, 34 A2d 375; Scranton-Spring Brook Water Service Co. v. Public Service Commission (1935) 119 Pa Super Ct 117, 14 PUR NS 73, 181 Atl 77. The following Commissions have also enunciated such a rule: California, Illinois, Indiana, Ohio, Maryland, and Virginia.

Other reasons also exist which justify the disallowance. The company, in its brief at page 1 and in opening statement of counsel (transcript of June 6, 1950, page 72), states that "The importance of the matters presently to be presented is not in the first instance the rates presently charged or sought to be charged by the company, but the basis or formula by which such rates are determined." This then is not a proceeding in the first instance to secure adequate rate in which the utility and the customer have an interest but it is a test case to establish an interpretation of the Kentucky Statutes governing utilities.

A final reason for refusing to allow this item is that it is completely out of proportion with the other factors in the case. The amount of property involved, the size of the company with regard to its operation, the rate relief requested, and the need for relief at the time of filing are all to be considered in determining the propriety of the expense incurred in presenting a case. Indeed, rate case expense here amounts to one-fourth of the rate relief requested by the company. For these reasons the Commission feels justified in requiring the stockholders rather than the ratepayers to bear the costs of this proceeding in excess of $75,000. The Commission is further of the opinion that five years is a reasonable period over which this charge should be amortized. Accordingly, an allowance of $15,000 is made in the operating expense of the company for the test period. Apportioning this amount to gas and electric operations on the basis of the total estimated expenditures we have $6,838 assignable to gas operations and $8,162 assignable to electric operations.

After eliminating the amounts of rate case expense actually charged to operating expenses during the test year, $20,811 for gas operations and $24,968 for electric operations, we find that the net adjustment results in a decrease of $13,975 for gas and $16,806 for electric operating expenses.

Inasmuch as Newport Steel's electric revenues have been considered as operating revenue, the corresponding expense must also be considered.

From the staff's testimony we determine that the electric expenses, excluding income taxes, must be increased by the sum of $1,993,146 for this item.

[5] Several adjustments are necessary for Federal and state income taxes. The gas and electric operations receive the benefit of certain tax savings due to the loss sustained in Union's water operations. Inasmuch as we are considering the gas and electric operations alone in these cases, the Commission is of the opinion that these tax savings should be eliminated from the gas and electric operations inasmuch as they are assignable solely to the water operations. Income taxes must also be adjusted to fully reflect the current Federal income tax rate of 52 per cent, to reflect certain tax savings due to increased bond interest on bonds issued October 1, 1951, and to reflect the changes in operating expenses due to the other operating expense adjustments herein found proper. The sum of these tax adjustments reduce gas expenses by some $217,887 and increase electric expense by some $107,730.

[6] The Commission has rejected all other adjustments suggested by Union. One of these adjustments is the reclassification of donations from Miscellaneous Income Deductions, a "below the line" charge, to operating expense. The Uniform System of Accounts as prescribed by this Commission provides that this item shall be a deduction from miscellaneous income. This is done on the theory that any charitable contributions which this company desires to make should be made on behalf of the owners or stockholders of the company and not the ratepayers.

Another adjustment is a proposed increase in wholesale power purchased from the parent company, Cincinnati Gas and Electric Company. This matter is subject to the jurisdiction of the Federal Power Commission, and inasmuch as the proposed rate has not finally been determined, nor is it currently in effect, the Commission is of the opinion that that matter should be properly considered at a future date if it should become effective and not at this time.

Another adjustment suggested related to rental expense to be paid at some future date by Union for use of a building now under construction for the parent company in Cincinnati. These proposed increased rents are not now being paid and the actual completion date of the building appears to be uncertain. This is another item that the Commission finds would be properly considered at a future date when the utility is actually confronted with the expense.

Union also suggests an adjustment in its annual provision for depreciation based upon its plant in service at the end of the test period, rather than actual depreciation expense incurred during the period. The Commission is of the opinion that the actual depreciation expense incurred during the test period is proper to use in this case in view of our findings relative to use of average plant figures for the test period.

For the purpose of this case, and for reasons set out later in this opinion, the amortization of the plant acquisition adjustment in the amount of $41,904 has been considered as an operating expense. The operating expenses for the test period as considered

by the Commission may be summarized as follows, parentheses indicating negative amounts:

	Gas Operations	Electric Operations
Actual Operating Expenses, per Books	$4,500,707	$5,080,927
Adjustments:		
Regulatory Commission Expense	1,160	(57)
Purchased Gas	423,474	.....
Increased Wages	58,274	84,912
Postage Costs	3,521	3,708
Rate Case Expense	(13,973)	(16,806)
Federal Electrical Tax	.....	(108,686)
Newport Steel Expenses	.....	1,993,146
Federal and State Income Taxes	(217,887)	107,730
Amortization of Plant Acquisition Adjustment	.....	41,904
Total	$4,333,737	$6,762,540

Rate Base

Having determined the adjusted net operating income, we will view it in the light of the properties devoted to rendering the service. Chapter 46 of the Legislative Acts of Kentucky which was enacted by the General Assembly and became law on March 5, 1952, sets out the following mandate for the Commission:

"In fixing the value of any property under this subsection, the Commission shall give due consideration to the history and development of the utility and its property, original cost, cost of reproduction as a going concern, capital structure, and other elements of value recognized by the law of the land for rate-making purposes."

The Commission generally has related the average of a utility's investment in property to its actual operating experience for a given test period for the purpose of testing the reasonableness of rates because such averages are readily determined from the records of the utility. An alternative method would be to consider the utility's property at the end of the test period. In this case it would be necessary to adjust all of its revenues and expenses to the conditions at the year-end level. The difficulties that would be encountered by such a method are readily apparent inasmuch as such adjustments would require tedious computations and would be to a certain extent, at least, estimates.

History and Development of the Utility and Its Properties

The history of this utility has been a most prosperous one, at least during the past few years. It serves largely an urban area with a high density of customers which promotes efficiency and low cost of operation of utility properties. It has rendered an unusually high grade of service to its customers and has with few exceptions adequately fulfilled the need for electric and gas service in the area which it serves. Although its equity securities are held largely by the parent corporation and are not generally traded in the open market, its bonds have been sold to the public at very favorable rates of interest, as late as October of 1951.

Because of the particular circumstances under which it operates combined with good management, it has maintained electric rates that are among the lowest, not only in Kentucky, but in the nation.

This has all been done under rates that have changed only downward within the history of this Commission. The annual reports of the utility filed with this Commission bear out the

adequacy of earnings over the past few years. From these reports, we have determined the actual return on the net average investment rate base for these years:

	1948	1949	1950
Net average investment rate base	$6,611,688	$7,279,339	$8,618,334
Net Operating Income	693,389	657,299	715,550
Rate of Return	10.49	9.03	8.30

Original Cost

"Original Cost" is defined in the Commission's Uniform System of Accounts for Gas and Electric Utilities as the cost, estimated if not known, of the plant when first devoted to the public use.

In compliance with the requirements of this Uniform System of Accounts, which is identical to that of the Federal Power Commission, Union made an original cost determination of its properties which was reflected in its books of accounts in the year 1944. This original cost determination was subsequently the subject of a joint investigation by this Commission and the Federal Power Commission which resulted in further adjustment of Union's plant accounts in accordance with this Commission's order of 29 May 1950 in Case No. 2093.

From the record it appears that the net average original cost of property rate base for the year 1951 is as follows:

	Gas	Electric
Plant in Service	$3,851,281	$8,444,879
Construction Work in Progress	267,642	1,035,420
Retirement Work in Progress	7,459	35,689
Materials and Supplies	90,697	63,363
Gross Average Original Cost	$4,217,079	$9,579,351
Reserve for Depreciation	1,244,439	2,785,859
Customers Contribution	89,377	201,019
Total Deductions	$1,333,816	$2,986,878
Net Average Original Cost	2,883,263	6,592,473

In developing the above figures it was necessary to apportion the reserve for depreciation. The record contains three separate methods for doing this, all of which give very similar results. In this case, the Commission has adopted the method suggested in the testimony of the staff witness, Collis, with a further apportionment of the common and automotive equipment reserves to gas and electric operations, as producing the most reasonable results.

Cost of Reproduction As a Going Concern

This is a most difficult and elusive item to determine. By its very nature it is not factual, but necessarily must be an estimate. Any estimate, however honestly and conscientiously made, is subject to error and sometimes considerable error when compared with actual experience. The Commission knows of no single method or formula to be used in determining a cost of reproduction of a utility's properties. Such determination is first of all, subject to interpretation as to the meaning of the term. Reproduction cost estimate using widely varying methods of approach have been presented to this Commission for consideration in various rate cases. In one case, at least, as commented upon in our opinion in Case No. 2216, the application of the Catlettsburg, Kenova, and Ceredo Water Company for increased rates,

the utility presented more than one reproduction cost estimate of the same property with substantially different results.

Then there is the matter of obsolescence. We use the familiar illustration of the problem of reproducing a model "T" Ford automobile. How would one go about this? It is obvious if a model "T" were reproduced new today its cost would not only exceed the original cost of manufacture, but would greatly exceed the cost of the corresponding current model, because no factory is set up to manufacture it today. It has become obsolete and its reproduction would be largely a hand operation, very costly. Moreover, the finished product would not render service comparable to its replacement.

The same problem confronts us in the reproduction of Union's utility properties. How would we go about it? Could we eliminate this item of obsolescence? Obviously yes, if we would redesign the properties, item by item, pole by pole, taking into consideration the present location of its customers, improvement in the art of manufacture of utility equipment, and other factors that have changed since the actual properties were constructed. We believe that the cost of such a study would be prohibitive and for that reason it would be an impractical answer to the problem.

Turning to the reproduction cost new estimate as presented by Union in this record, as we understand it, this item of obsolescence has not substantially been removed. Of what value for purposes of determining rates for the future is a reproduction cost new estimate that reproduces a property that in no event would ever be built? Or who would want today, for transportation purposes, a model "T," if the current model is available?

An inventory of the units of property to be reproduced is essential to any reproduction cost study. In this case, as we understand the testimony, the reproduction cost study as prepared by Union was based upon an inventory taken from the property records rather than an actual physical count of the items of property. If the property records were complete and accurate, such an inventory would be proper inasmuch as a physical inventory is a costly operation. However, any records are subject to some error, and it has been pointed out in this record that the inventory used by the witness Burnell was inaccurate in at least one instance, relative to the gas meters used to measure service to the Newport Steel Corporation.

In conjunction with its reproduction cost new estimate, Union presented an estimate of the observed depreciation. As we understand it, this observed depreciation does not necessarily have any relationship to the service life of the property. It was made by judgment based upon inspection of the property. This inspection did not include every item of property but was based on samples of the property. In the case of gas pipes, conduit, and other property buried underground it was necessarily based upon very limited samples, covering only an insignificant fraction of the actual property.

In making its annual provision for depreciation of its properties which is charged to its operating expenses, Union does not use as a basis any such method of observed depreciation. If it did so, its provision for depreciation

would be inadequate because the factors of obsolescence and casualty have a substantial bearing on the experienced life of the property. We fail to see any material value for rate-making purposes of depreciation set up on a basis that has no counterpart in actual practice.

If such a speculative and highly inflated rate base as the Reproduction Cost New Less Observed Depreciation estimate presented in these cases by Union is to be considered, it is obvious that the rate of return allowed on it will necessarily be small in the light of the adequacy of the earnings of Union upon its actual investment, original cost, and capital structure.

Union's cost of reproduction less observed depreciation estimate as of 31 December 1951, after elimination of the cash working capital item in accordance with our findings later in this opinion, appears to be in the amount of $8,188,867 for gas operations and $17,424,967 for electric operations. While the record does not disclose the average amount of this estimate for the test period, it appears that it would be somewhat less than this year-end figure.

This being the only cost of reproduction as a going concern rate base in this record, the Commission, in compliance with the mandate of the Kentucky Statutes, but keeping in mind the limitations as set out above, will consider it in determining the reasonableness of Union's rates.

Capital Structure

The record discloses the average total capital structure of the company consisted of:

Capital Stock—Common	$2,495,809
Surplus	1,906,990
Long Term Debt	5,291,667
	$9,694,466

We have apportioned these items to the gas and electric operations on the net investment basis which resulted in the following assignments:

	Gas Department	Electric Department	Total Gas & Electric
Capital Stock	$693,835	$1,624,023	$2,317,858
Surplus	530,143	1,240,878	1,771,021
Long-term Debt	1,471,084	3,443,288	4,914,372
	$2,695,062	$6,308,189	$9,003,251

The adjusted net operating income hereinafter mentioned of $166,970 for the gas department, $451,562 for the electric department, or a total of $618,532 for combined electric and gas operations, would allow the company to pay its interest of $54,836 assignable to gas operations and $128,351 assignable to electric operations on the same basis. After considering the adjusted net operating income, interest, other income, and other deductions assignable to gas and electric operations the company would earn 8.4 per cent on the total capital stock and surplus assigned to gas, 10.5 per cent on that portion assigned to electric operations, or a composite 9.9 per cent on both gas and electric operations. Assuming a 10 per cent dividend on the par value of the common stock assigned to the gas and electric operations, this would leave remaining for surplus assignable to gas operations $33,564 or 6.33 per

cent and $139,310 or 11.23 per cent for the surplus assignable to electric operations, and for the total surplus assignable to gas and electric operations a composite of 9.76 per cent.

Net Investment

A rate base that has frequently been developed by this Commission in previous cases, sometimes referred to as the "Net Investment," can be developed by adding to the original cost rate base the items of prepayments, which are payments that the utility must make on items incident to its operations prior to their due dates, and the net of the utility plant acquisition adjustment. The latter items in this case pertains to the electric properties only and results from the purchase of certain utility properties of the Community Public Service Company in 1950. This acquisition adjustment, in the gross amount of $419,049, represents the excess of the purchase price of the properties over the net original cost. After the purchase, Account 252, Reserve for Amortization of Electric Plant acquisition adjustment, was credited with the sum of $209,524, which was offset by a corresponding charge to Account 271, Earned Surplus. These entries, as well as a provision for amortization of the net plant acquisition adjustment over a 5-year period amounting to some $41,-904, were approved by order of this Commission in Case No. 2073. For the calendar year 1951, the average balance in the Reserve for Amortization of electric plant acquisition adjustment was in the sum of $247,936.

Applying these adjustments to the original cost rate base, we have the net investment rate base as follows:

	Gas	Electric
Plant in Service	$3,851,281	$8,444,879
Construction Work in Progress	267,632	1,035,420
Retirement Work in Progress	7,459	35,689
Materials and Supplies	90,697	63,363
Prepayments	14,039	16,976
Plant Acquisition Adjustment	.....	419,049
Total Gross Average Investment	$4,231,108	$10,015,376
Deductions:		
Reserve for Depreciation	1,244,439	2,785,859
Customers Contributions	89,377	201,019
Reserve for Amortization of Plant Acquisition Adjustment	.....	247,936
Total	$1,333,816	$3,234,814
Net Average Investment	2,897,292	6,780,562

[7, 8] In addition to the items included in these rate bases, Union has suggested the addition of certain sums for cash working capital. A large part of Union's operating expenses are caused by wholesale purchases of gas and electricity, which items are paid for subsequent to receipt of these services. In addition, Union accrues large sums for the payment of taxes in advance of the due date of these taxes. These sums are available to it for the general conduct of its business. During the test period, the minimum balance of accrued taxes was in the amount of $570,211.

For these reasons the Commission has rejected Union's claim of cash working capital as a rate base item.

Summary

Conforming with the Commission's findings as set out above, Union's operations for the test period may be summarized as follows:

	Gas	Electric	Combined Gas and Electric
Net Average Original Cost of Property	$2,883,263	$6,592,473	$9,475,726
Cost of Reproduction less Observed Depreciation of Property	8,188,867	17,424,967	25,613,834
Average Capital Structure	2,695,062	6,308,189	9,003,251
Net Average Investment	2,897,292	6,780,562	9,677,854
Operating Revenues	4,500,707	7,214,102	11,714,809
Operating Expenses	4,333,737	6,762,540	11,096,277
Net Operating Income	166,970	451,562	618,532
Return on the following:			
Net Average Original Cost of Property	5.79%	6.85%	6.53%
Cost of Reproduction less Observed Depreciation of Property	2.04%	2.59%	2.41%
Average Capital Structure	6.20%	7.16%	6.87%
Net Average Investment	5.76%	6.66%	6.39%

Having considered the history and development of the gas and electric utility properties of the Union Light, Heat and Power Company, the original cost, cost of reproduction as a going concern, its capitalization, and other elements of value recognized by the law of the land for rate-making purposes as set out in the evidence in this case, the Commission is of the opinion and finds that Union's rates for gas and electric service that were in effect prior to the revised rates placed in effect by Union as a result of this rate case, are just, fair, and reasonable rates and will enable Union to pay its operating expenses, interest on borrowed money, a reasonable dividend to its stockholders, provide a reasonable amount for its surplus, and attract the capital necessary to provide adequate service in the areas in which it operates.

The Newport Steel Corporation introduced considerable evidence into this record relative to its rates for gas service. This evidence included what purported to be an apportionment of Union's plant revenues and expenses to the Newport Steel business, and a suggested rate to be applied to Newport Steel, based on this apportionment. Union introduced certain rebuttal evidence which questioned the accuracy, reasonableness, and propriety of the apportionment as set out in Newport Steel's evidence.

Having considered this evidence, and in the light of our denial of the proposed increase which included the Newport Steel Corporation, the Commission is of the opinion and finds that the gas rate which the Newport Steel Corporation was served prior to the application in this case is a fair, just, and reasonable rate for this service and is not discriminatory.

Orders in conformity with this opinion will be issued separately in Cases No. 2001 and 2002.

ARKANSAS SUPREME COURT

Ouachita Rural Electric Cooperative Corporation

v.

Garrett

No. 4-9917
— Ark —, 252 SW2d 545
November 17, 1952

APPEAL *from decree restraining electric co-operative from increasing rate for electric current used in operation of welding machine; affirmed.*

Rates, § 220 — Franchise limitation on increase — Electricity.

1. An electric co-operative was prohibited from increasing its rates for current supplied to a welding machine where one of the conditions of the franchise granted the co-operative by the municipality in which it operated was that it would not increase existing rates without the municipality's permission, p. 48.

Discrimination, § 29 — Deviation from schedule — Electric rate of co-operative.

2. It is not discriminatory for a co-operative to charge less than the filed rate in one of its service classifications where it is not shown that any other consumer actually pays a greater amount for the same service, p. 48.

Public utilities, § 53.1 — Co-operative associations — Jurisdiction of Commission.

3. Except for the requirement that a co-operative must obtain a certificate of convenience and necessity to operate, it is not subject to the jurisdiction of the Public Service Commission, p. 48.

Discrimination, § 95.1 — Co-operative rates.

4. A co-operative is not under the same restrictions as to establishing non-discriminatory rates as a public utility company, since, except for the requirements that it obtain a certificate, a co-operative is not subject to Commission jurisdiction, p. 48.

APPEARANCES: Gaughan, McClellan & Gaughan, Camden, for appellant; Wm. C. Medley, Hampton, for appellee.

GEORGE ROSE SMITH, J.: This is a suit brought by the appellee to restrain the appellant from imposing a minimum charge of more than $2.50 a month for electric current used by the appellee in the operation of a welding machine. By cross-complaint the appellant asserted that its minimum rate in this situation is $10 a month and asked judgment for the difference between that rate and the amount collect-

ed. A temporary injunction against the higher charge was granted when the suit was filed in 1942, and this injunction was made permanent when the case was brought to trial in 1952.

The facts are not in dispute. The electric distribution system at Hampton, Arkansas, was formerly owned by the West Memphis Power & Water Company. When the appellee installed his welding machine in 1939 or early 1940 the company agreed to a tentative minimum monthly rate of $10, with the understanding that it would be reduced if the amount of current used did not justify such a high rate. The first month's experience showed that the machine used only 20 kilowatt hours of energy, and the company reduced the rate to a $2.50 minimum.

As of December 31, 1941, the appellant purchased this distribution system and two months later obtained a franchise from the city council. The ordinance granting the franchise contains this provision: "The co-operative shall maintain a reasonable schedule of rates, said rates not to exceed the rates in effect at the present time without the consent of the municipality, but may be lowered at any time practicable." At that time the West Memphis Power & Water Company had on file with the Public Service Commission a rate schedule showing that the minimum monthly charge for a machine such as the appellee's was $10.

After the appellant took over the system it continued to bill the appellee at the $2.50 figure until December 1, 1942, when it contended that the $10 minimum applied and threatened to discontinue service unless the higher rate were paid. This suit was then filed by Garrett.

[1–4] For recovery the appellant relies upon the rule that, since a public utility is not permitted to discriminate among its patrons, it cannot validly agree to give preferential rate to a particular consumer. We have often applied the rule in cases arising under the Interstate Commerce Act, 49 US CA § 1 et seq., as in Missouri P. R. Co. v. Pfeiffer Stone Co. (1924) 166 Ark 226, 266 SW 82. Before applying the rule to this appellant we should first have to determine whether such a co-operative is a public utility and if so whether it is forbidden by statute or by the common law to discriminate among its customers.

We find it unnecessary to explore these questions, for we think that by its franchise the appellant agreed to the $2.50 rate being paid by Garrett in 1942, and actual discrimination is not shown. The franchise limited the appellant to a reasonable schedule of rates, "not to exceed the rates *in effect*" when the ordinance was passed. It cannot be denied that the $2.50 minimum rate, voidable though it may have been, was then in effect and had been for more than a year, as the appellant must have known had it examined its vendor's records. Indeed, the appellant itself continued the lower rate for nine months after its purchase. Although the appellant's manager testified that the co-operative meant to agree to the schedule then on file with the Public Service Commission, his opinion cannot alter the terms of the ordinance.

We see nothing to prevent the co-operative's agreement that the lower rate should govern. Except for the requirement that it obtain a certificate of convenience and necessity, an elec-

tric co-operative is not subject to the jurisdiction of the Public Service Commission. Ark Stats 1947, §§ 77–1131 and 77–1136; Department of Public Utilities v. McConnell (1939) 198 Ark 502, 30 PUR NS 53, 130 SW2d 9. Hence the appellant was not compelled by law to adhere to the rates then on file. Nor does the record show its agreement to have been discriminatory in fact, since there is no testimony to the effect that any other consumer actually pays a greater amount for the same service.

Affirmed.

NEW YORK PUBLIC SERVICE COMMISSION

Re Consolidated Edison Company of New York, Incorporated

Case 16054
December 30, 1952

REQUEST *for hearing and determination of reasonableness of increased electric rates for service to municipal transit system; hearing ordered.*

Rates, § 126 — Basis for rate reduction — Operating losses of municipal customer.

1. That a city is sustaining a large deficit in the operations of its subway does not supply any basis for lower rates for electric service to the municipal transit system, p. 50.

Rates, § 147 — Basis for rate reduction — Electric service to city transit system — Free use of streets.

2. That a city allows an electric company to use its streets for distribution purposes without so-called proper compensation is no basis for reduced electric rates to a municipal transit system, p. 50.

Rates, § 649 — Hearing requirements — Previous absence of Commission jurisdiction.

3. A hearing was ordered on the form and reasonableness of a rate increase for electric service to a municipal transit system, filed upon expiration of a service contract, where the Commission had never passed on the form or reasonableness of rates for such service, because it had been excluded from that field by the contract between the company and the city, p. 50.

By the COMMISSION: A contract under which electricity was supplied by Consolidated Edison Company to the city of New York for transportation purposes expired on November 15, 1952. Such contract under the pertinent statute was not subject to the jurisdiction of this Commission. Efforts by the company and the city to negotiate a new contract failed;

company refused any further renewal of the old contract and thereupon filed a tariff with this Commission establishing rates for such service which became effective on November 16, 1952. A complaint by the Board of Transportation, acting for the city of New York, is now before us requesting a hearing thereon on the grounds that the filed rates, which add $2,782,800 to the transportation bill of the city, should not be permitted to continue because (1) the city is already sustaining a large deficit in the operations of the subway and (2) the city is entitled to lower rates on the theory that it allows company to use city streets for distribution purposes without so-called proper compensation.

[1–3] Neither of these contentions supply any basis for the relief requested nor are they germane to a determination of the issues involved which are—the form and reasonableness of the recently filed tariff. Not only do the filed rates substantially increase the cost to the city but the more significant fact is that this Commission has never passed upon the form or reasonableness of charges for electric service to the City Rapid Transit System, having been excluded from that field by the special contract between the company and the city. This Commission will, therefore, authorize hearings which will afford a full opportunity to present competent and material evidence upon the issues involved.

MARYLAND COURT OF APPEALS

Chesapeake & Potomac Telephone Company

v.

Public Service Commission

No. 92
— Md —, 93 A2d 249
December 5, 1952

APPEAL *in telephone rate proceeding from court order dismissing complaint filed by utility against Commission except to extent of granting certain relief, and remanding the case to the Commission for further proceeding; order reversed and Commission order reinstated. For Circuit Court decision, see (1952) 95 PUR NS 129.*

Appeal and review, § 74 — Procedure — Demurrer — Acceptance of decision.

1. Demurrers, filed by the Commission and others to an appeal by a telephone company from a Commission order denying one part of a rate in-

crease and approving another part, need not be sustained on the ground that the company could not appeal from both parts of the Commission's order that denied a rate increase to the full extent sought and at the same time accept the benefits of the partial relief granted, since the doctrine of election by the acceptance of benefits under a judgment is inapplicable to the appeal of the character under consideration, p. 52.

Appeal and review, § 6 — Right to appeal from part of rate order while accepting benefits from another part.

2. A utility may avail itself of a limited rate increase awarded it by the Commission without abandoning the right to court review of the validity of the entire order, p. 52.

Return, § 9 — Fair value rate base.

3. The Commission is required to base telephone rates on the fair value of the company's property dedicated to public service, p. 54.

Appeal and review, § 6 — Right of judicial review — Rate proceeding.

4. The right of court review in utility rate cases on an issue of constitutionality under the Fourteenth Amendment has been clearly recognized, p. 55.

Valuation, § 27 — Fair value rate base — Method of computation.

5. No particular formula need be used in determining the fair value rate base of a public utility, nor does controlling effect have to be given to reproduction cost as compared to original cost in such a computation, p. 57.

Valuation, § 39 — Reproduction cost.

6. The inherent weaknesses of reproduction cost estimates as a means of arriving at a fair value rate base have been fully recognized by the courts and in many cases such estimates have been totally rejected, p. 57.

Appeal and review, § 52 — Scope of judicial review — Finding of rate base.

7. A Commission decision as to the proper base for a telephone utility was affirmed on appeal by a court where the court was unable to find from the record that the Commission failed to give proper consideration to evidence of reproduction cost as claimed by the utility and where, even if the Commission had made an error of judgment in its decision, the important consideration would be the experience of the company under the rates established and not prophecy or estimate as to what would result, since, if the rates proved to be confiscatory, the company at that time would not be without remedy, p. 57.

Valuation, § 299.1 — Working capital allowance — Taxes.

8. There is no need to allow earnings upon a cash balance to be held for working capital purposes without regard to tax accruals available to a utility until they become payable to the taxing authorities, since, if such an allowance were made, there would be a duplication of charge already made against the ratepayer, p. 59.

Expenses, § 87 — License contract payments.

9. Payments made by an operating telephone company to its parent of one per cent of gross revenues under a license contract were found to be reasonable and proper, p. 61.

Return, § 9 — Fair value rate base — Effect of Supreme Court decision.

Discussion as to whether the United States Supreme Court, in the Hope

Natural Gas Company Case, abandoned the test of fair value as an element of due process which had been established in earlier rate proceedings, p. 56.

Valuation, § 299.1 — Working capital — Consideration of tax collections as an offset.

Discussion of the theory that tax funds which are held by a utility for future payment should not be used as an offset against any working capital allowance because such a consideration presupposes that revenues collected are contributions by consumers, and if such revenues are used as cash working capital, it is the customers who are furnishing it, p. 60.

APPEARANCES: Clarence W. Miles, Baltimore (Wm. G. Gassaway, Washington, D. C., William B. Rafferty and Miles, Walsh, O'Brien & Morris, Baltimore, and Stephen H. Fletcher, Washington, D. C., on the brief), for Chesapeake & Potomac Telephone Company; Joseph Allen, People's Counsel, and Ward B. Coe, Jr., Assistant People's Counsel, Baltimore, for Counsel; H. Donald Schwaab, Assistant City Solicitor, Baltimore (Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, and Hugo A. Ricciuti, Assistant City Solicitor, Baltimore, on the brief), for city of Baltimore; Charles D. Harris, General Counsel, Baltimore, for Public Service Commission.

Before Markell, CJ., and Delaplaine, Collins, and Henderson, JJ.

HENDERSON, J.: The appeal in this rate case is from an order of the circuit court No. 2 of Baltimore City dismissing a bill of complaint filed by the appellant against the Public Service Commission of Maryland, except to the extent that certain relief prayed therein was granted, and remanding the case to the Commission for further proceedings. (See [1952] 95 PUR NS 129.) The bill of complaint had been filed pursuant to the provisions of §§ 358 and 415, Art 23 of the Code of 1939, §§ 15 and 74, Art 78 of the Code of 1951, praying that paragraphs (1), (3), and (4) of the Commission's Order No. 48888 entered in Case No. 5176 on March 11, 1952, 93 PUR NS 215, be declared illegal and set aside. The Commission, the people's counsel, and the mayor and city council of Baltimore filed demurrers which were overruled. Answers were then filed by all parties, after the demurrers had been filed but before they were overruled the people's counsel and the city filed a cross bill seeking to vacate the Commission's order on other grounds. Answers were filed by the company and the Commission, the cases were consolidated and heard on bills and answers without the taking of additional testimony. The court dismissed the cross bill, except to the extent that certain relief prayed therein was granted. The people's counsel and the city appealed from this order and the company also appealed. The court granted a stay of its orders pending appeal, conditioned upon the company filing a bond in the amount of $1,000,000. An appropriate bond was duly filed and approved.

[1, 2] A preliminary question is raised by the cross-appellants, that their demurrers to the original bill should have been sustained on the

ground that the company could not appeal from those parts of the Commission's order that denied a rate increase to the full extent sought, and at the same time accept the benefits of the partial relief granted. To understand the contention made it is only necessary to quote the concluding paragraphs of the Commission's opinion, *supra*, 93 PUR NS at p. 242: "We have found the rate base to be $118,279,156. We have determined that a rate of return from 5.75 per cent to 6 per cent is reasonable and fair. The company should therefore be permitted to earn a net of from $6,900,000 to $7,100,000. It, therefore, appears that the company requires at least from $300,000 to $500,000 additional net income to enable it to earn the rate of return which this Commission has fixed as fair and equitable. . . . The company may reasonably expect additional gross revenue in the amount of $943,000 annually as the result of a 10-cent coin-box charge. Giving effect to the current 52 per cent tax rate would result in increased net revenue of $452,640 which, in the opinion of the Commission, is sufficient to give the company a reasonable return.

"The Commission is of the opinion that the company should be permitted to increase its local coin-box telephone call charge from 5 cents to 10 cents and that its application for increased rates in other respects should be denied."

The doctrine of election by the acceptance of benefits under a judgment is subject to certain limitations; as, for example, where there is no controversy as to the appellant's right to the amount for which the judgment was given. See note 169 ALR 985. In the instant case the Commission found that the company was entitled to the limited relief granted and the cross-appellants did not challenge the company's right to that relief until after the demurrers had been filed. However, we think the doctrine is inapplicable on a broader ground.

Section 16(c), Art 78, of the Code of 1951, provides that "All orders of the Commission shall take effect within such reasonable time as it shall prescribe, and shall continue in force until its further order, or for a specified period of time according as shall be prescribed in the order, unless the same shall be suspended or modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction."

Section 16(d) of the same article provides that "Any company, corporation, association, person, or partnership subject to any of the provisions of this subtitle or other person or party in interest, including the people's counsel shall have the right to proceed in the courts to vacate, set aside, or have modified any order of said Commission on the grounds that such order is unreasonable or unlawful, as hereinafter more particularly set forth."

It seems clear from these provisions, taken in connection with the provisions as to the finality of Commission orders and the rights of immediate appeal contained in § 55(c) and §§ 74 and 77, cf. Potomac Edison Co. v. Public Service Commission (1933) 165 Md 462, 1 PUR NS 339, 169 Atl 480, that the orders of the Commission should normally take effect forthwith. In the absence of a stay by the Commission or injunction by the court, we cannot find that an appellant

has any option in the matter. It would seem to follow that an appellant should not be put to an election. If we assume, without deciding, that an appeal from an order opens for review the whole subject matter, to the extent that it is inseparable, it is still not incumbent upon an appellant to specifically object to every part of the order, if the complaint is only addressed to a part, particularly where a modification rather than a complete reversal is sought. In these respects the case of a utility, exercising a statutory right of appeal from the action of a regulatory administrative body, is distinguishable from the case of a private litigant. The cross-appellants have cited no case, in Maryland or elsewhere, that has applied the doctrine of election to appeals of the character under consideration.

In Valparaiso Lighting Co. v. Public Service Commission, 190 Ind 253, PUR1921B 325, 129 NE 13, 17, cited by the cross-appellants, the court stated that the doctrine of election and estoppel did not apply to orders of a Commission establishing rates. It is true that the court also pointed out that the rates for gas and electricity, contained in the single order in that case, could be treated as separable, so that the decision was not as broad as the principle announced. However, in Department of Public Utilities v. New England Teleph. & Teleg. Co. (1950) 325 Mass 281, 82 PUR NS 142, 90 NE2d 328, 333, it was squarely held that the company could avail itself of a limited rate increase without abandoning the right to court review of the validity of the order. The practice has been followed without challenge in Maryland and elsewhere. Cf. Public Service Commission v. United R. & Electric Co. 155 Md 572, PUR1928D 141, 142 Atl 870; Hudson & M. R. Co. v. United States (1941) 313 US 98, 85 L ed 1212, 61 S Ct 884; Lowell Gas Co. v. Department of Public Utilities (1949) 324 Mass 80, 78 PUR NS 506, 84 NE2d 811, 813; Public Service Commission v. Southern Bell Teleph. & Teleg. Co. (1949) 253 Ala 1, 84 PUR NS 221, 42 So2d 655; New England Teleph. & Teleg. Co. v. State (1949) 95 NH 353, 78 PUR NS 67, 64 A2d 9; Southern Bell Teleph. & Teleg. Co. v. Public Service Commission (1948) 203 Ga 832, 75 PUR NS 471, 49 SE2d 38.

[3] The cross-appellants contend that under Maryland law the Commission is not required to base rates on the "fair value" of a utility's property. Under § 55(a), Art 78 of the Code of 1951, unchanged since its adoption by Chap 180, Acts of 1910, the Commission is directed, in an appropriate case, to "ascertain the fair value of property of any corporation subject to the provisions of this Article and used by it for the convenience of the public." The cross-appellants contend, however, that this section is limited in its application and does not apply to rate making; that the only standards for fixing telephone rates are in § 70(a) providing that rates be "just and reasonable and not more than allowed by law or by order of the Commission and made as authorized by this subtitle." They argue that the words "just and reasonable" should be construed as coextensive with the requirements of the Fourteenth Amendment to the Federal Constitution, as laid down in the latest Supreme Court cases, to prohibit confiscation, not to prescribe a valuation method.

We think the contention is unsound. In Havre de Grace & P. Bridge Co. v. Towers (Public Service Commission), 132 Md 16, 27, PUR1918D 484, 493, 103 Atl 319, 323, a rate case, the court quoted § 442 of Art 23 (now § 55, Art 78 of the Code of 1951) and said: "What the Commission in this case was authorized to ascertain under the section referred to was the *fair value* of the property." In Miles v. Public Service Commission, 151 Md 337, 344, PUR1926D 610, 617, 618, 135 Atl 579, 582, 49 ALR 1470, the court said: "The very purpose of authorizing the Commission to ascertain the value of the property of the various public service corporations is to enable it to fix the rates which the corporation is permitted to charge the public for the service rendered." Again, in Public Service Commission v. United R. & Electric Co. *supra* 155 Md at pp. 579, 602, PUR1928D at pp. 149, 172, the court said: "The central dominating question presented by the appeal is whether the schedule of rates promulgated by the Commission is insufficient to yield such an income as will give to the company a fair return on the value of its property. . . . In valuing the property for rate-making purposes the Commission based its conclusion upon its present value, and not upon its original cost, and in fact the case of Havre de Grace & P. Bridge Co. v. Public Service Commission, *supra,* left it no alternative."

Upon the question of statutory construction we think these three cases are directly in point and controlling. If further support were needed, it could be found in the legislative references to fair value and value in Chap 180, Acts of 1910, and Chap 732, Acts of 1941, and in the uniform and consistent administrative recognition of the principle in the published opinions of the Commission. In the instant case both the Commission and the lower court recognized that the fair value concept was applicable by reason of the statute.

[4] If "fair value" is the rule prescribed by the statute, as we hold, we are faced then with an inquiry as to the true meaning of those words. The appellant contends that the words amount to a legislative adoption of the rule recognized by the Supreme Court at the time when the statute was passed in 1910, that rates fixed by a state for a public utility must allow a reasonable return upon the present fair value of the property used for the public. The right of court review in rate cases, on an issue of constitutionality under the Fourteenth Amendment, was clearly recognized in Chicago, M. & St. P. R. Co. v. Minnesota ex rel. R. & Warehouse Commission (1890) 134 US 418, 33 L ed 970, 10 S Ct 462, 702, and Reagan v. Farmers' Loan & Trust Co. (1894) 154 US 362, 38 L ed 1014, 14 S Ct 1047. The so-called "fair value" rule seems to have originated in Smyth v. Ames (1898) 169 US 466, 546, 42 L ed 819, 18 S Ct 418, 434, where it was said: "We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation . . . must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared

with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters, to be regarded in estimating the value of the property." It may be noted that this statement does not undertake to lay down any definite formula for the determination of value. In San Diego Land & Town Co. v. Jasper (1903) 189 US 439, 442, 47 L ed 892, 23 S Ct 571, 572, the court said: "It no longer is open to dispute that under the Constitution 'what the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.' San Diego Land & Town Co. v. National City (1899) 174 US 739, 757, 43 L ed 1154, 19 S Ct 804. That is decided, and is decided against the contention that you are to take the actual cost of the plant, annual depreciation, etc., and to allow a fair profit on that footing over and above expenses. We see no reason to doubt that the California statute means the same thing. Yet the only evidence in favor of a higher value in the present case is the original cost of the work, seemingly inflated by improper charges to that account and by injudicious expenditures . . . . No doubt, cost may be considered, and will have more or less importance according to circumstances."

In Willcox v. Consolidated Gas Co. (1909) 212 US 19, 42, 53 L ed 382, 29 S Ct 192, 196, the court reiterated the rule that there must be a fair return upon the reasonable value of the property at the time it is used for the public, even though the property has increased in value since it was acquired. It was indicated, however, that where "the material fact of value is left in much doubt," the court ought not to interfere.

The cross-appellants strongly contend that the fair value doctrine was repudiated by the supreme court in Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281, 282. In that case the court was dealing with a Federal statute that did not mention fair value as the rate base but empowered the Federal Power Commission to fix "just and reasonable" rates. For present purposes it is not necessary to determine the exact scope or implications of the several opinions in that case. It may well be that the Supreme Court, following earlier intimations, did in that case abandon the test of fair value as an element of due process. See note 8 Md LR 122, 126. Or it may be that the decision, instead of repudiating Smyth v. Ames, sub silentio, merely placed the emphasis on the end product or result reached, rather than the method employed, and in effect extended the area of administrative discretion, within the limits of due process. In either event, we think the test of fair value is explicit in the Maryland statute, as construed by this court. Cf. Northern States Power Co. v. Public Service Commission (1944) 73 ND 211, 53 PUR NS 143, 13 NW 2d 779, 785. Whether it is implicit in the Maryland, as distinguished from the Federal, Constitution, is a ques-

tion we need not and do not now consider.

[5] The appellant has cited no case, however, holding that in determining fair value any particular formula must be adopted, or that controlling effect must be given to reproduction cost, as compared to original cost. In its brief it is stated that the principal ground on which it relies is "the Commission's failure to give adequate weight to reproduction cost." The cases of McCardle v. Indianapolis Water Co. 272 US 400, 408, 71 L ed 316, PUR1927 A 15, 47 S Ct 144, and Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 305, 77 L ed 1180, PUR1933C 229, 53 S Ct 637, relied upon by the appellant, both indicate that the determination of value is not a matter of formula, although consideration must be given to reproduction cost. In some cases, courts have expressed a preference for reproduction cost. Marietta v. Public Utilities Commission (1947) 148 Ohio St 173, 71 PUR NS 186, 74 NE2d 74, 79. In others it has been said that "the determination of fair value is not controlled by arbitrary rules or formulae, but should reflect the reasonable judgment of the Board based upon all the relevant facts." Re New Jersey Power & Light Co. (1952) 9 NJ 498, 95 PUR NS 467, 473, 89 A2d 26, 32. In that case the court affirmed the action of the Commission in rejecting as of insufficient weight all of the evidence as to present value.

[6, 7] We come, then, to the heart of the question presented by the company's appeal, whether the Commission failed to give to reproduction cost the consideration required by the concept of fair value. The proceedings that culminated in the final order appealed from were initiated in 1946. On March 31, 1947, the Commission found the depreciated original cost of the intrastate property of the company to be $63,487,491, and on September 30, 1951, to be $115,219,017. The difference of some 52 millions represents new capital put into the enterprise in modernizing and improving the plant. The cross-appellants contended for a lower original cost figure. The appellant produced evidence to show that the depreciated reproduction cost of the company's property on the latter date was at least $140,446,097. The Commission found the fair value of the property on the latter date to be $118,279,156, or $3,060,139 in excess of the original cost claimed by the company.

The company argues that its estimate of reproduction cost was conservative and designed to meet the objections raised in the prior hearings. The basic current cost study was made in 1946, revised in 1948 to meet certain criticisms of the Commission, and brought to date by adding gross additions at book cost, although labor and material prices were materially higher in 1951. Plant retirements and the book increase in depreciation reserve were then deducted. The people's counsel strongly urged that these deductions were wholly inadequate. The only estimates that were before the Commission were those of the company, but the bases of the conclusions of the expert witnesses were vigorously attacked.

Estimates of reproduction cost are conjectural at best, not merely because they rest on opinion, but for the obvious reason that probably no plant

would ever be reproduced in its present form. Even the physical structures to replace the old would be designed, so far as possible, to compensate in efficiency and convenience for the higher construction costs. Cf. Schreiber v. Pacific Coast Fire Insurance Co. (1950) — Md —, 75 A2d 108, 111, 20 ALR2d 951. In regard to plant equipment, the increased cost of reproduction would likewise be measurably offset by the technological improvements constantly discovered and introduced to meet the rising costs of labor and materials. One result is that equipment becomes obsolete before it wears out. The fact that evidence as to a substitute plant has been held irrelevant, McCardle v. Indianapolis Water Co. *supra,* does not mean that the Commission must close its eyes to the obvious in weighing evidence of reproduction cost.

There can be doubt that the Commission took these factors into account. In its earlier opinion, 84 PUR NS 175, 183, 184, reaffirmed in the opinion filed in 1951, it said:

"In its major aspect, reproduction cost is an estimate of the cost of producing the same plant at the same locations and constructed of the same materials at the current prices of labor and materials. It obviously would normally take a long time to duplicate such a utility, usually estimated at three to five years, during which period, *in normal times,* the price of both labor and materials may increase or decrease to a considerable extent. It involves duplicating items of equipment and even buildings which are virtually obsolete and ready to be discarded, for many of which presumably the patterns, molds, and dies have been destroyed and could not be reproduced except at a prohibitive cost. In short, it is a theoretical reproduction of something which, as a practical matter if it did not exist, would not be produced in its present form and locations. As this highly theoretical process has questionable probative value in times of normal and stable economy, it has even less value at the present time. And the latter is particularly true with respect to the instant utility.

"As heretofore mentioned, the company is engaged in a major transition from manual to dial equipment. It has a large backlog of orders for telephone service which requires an enlargement and, to a large extent, rearrangement of some of its present facilities. Many of its buildings and much of its equipment is presently to be discarded. New buildings are to be (some are in the process) constructed and new equipment is to be installed and substituted for old, all of which will involve the expenditure of a huge sum of money, estimated to be $47,000,000 during the years 1947 and 1948 and $90,000,000 during the next five years. These enormous changes strongly indicate that there would be very little reality involved in undertaking to determine value from an estimate of the current cost of reproducing the present plant."

At the time of the final order the Commission noted that huge expenditures had been made at postwar prices, but that a large construction program was still ahead, including extensions and changes in the type of services, the heaviest expenditures to date having been in "back-bone" plant. The extent to which additions and improvements, in the light of an expanding

demand for services, might result in a greater margin of profit is of course problematical and incapable of demonstration. Equally problematical is the prediction of the experts that current prices, at an all-time high, are likely to continue upward.

The inherent weaknesses in estimates of this character have been fully recognized by the courts. See Georgia R. & Power Co. v. Railroad Commission, 262 US 625, 629, 67 L ed 1144, PUR1923D 1, 43 S Ct 680; Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 82 L ed 319, 21 PUR NS 480, 58 S Ct 334; Re New Jersey Power & Light Co. (1952) 9 NJ 498, 95 PUR NS 467, 89 A2d 26; New England Teleph. & Teleg. Co. v. State (1949) 95 NH 353, 78 PUR NS 67, 64 A2d 9. In these cases estimates of reproduction cost were totally rejected. In the instant case it is indisputable that the Commission did give weight to the estimates of reproduction cost, to the extent of over $3,000,000 above the company's original cost.

There are two schools of thought as to the scope of judicial review of questions of fact in a rate case, where the rates are claimed to be confiscatory under the Fourteenth Amendment. The opposing views are well stated in the majority and minority opinions in St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 80 L ed 1033, 14 PUR NS 397, 56 S Ct 720, although the whole court was in agreement that the findings should be sustained. Under one view findings of fact made by a rate-making body, as in the case of other administrative bodies called on to determine value, are final, at least in the absence of a clear showing that they are unsupported by substantial evidence or otherwise unlawful. Under the other view, it is said that there is a judicial duty to exercise an independent judgment on the facts on a constitutional question, e. g., of confiscation, or a jurisdictional question. But even here it is recognized 298 US at p 53, 14 PUR NS at pp. 404, 405, 56 S Ct at p. 726, that this "does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence," and that there is a "zone of reasonableness." We find it unnecessary to choose between these theories in the instant case. Under either view we cannot find on this record that the Commission failed to give proper consideration to the evidence of reproduction cost. Nor does it follow that an error in judgment on the part of the Commission would necessarily be fatal to the company. As stressed by the New Jersey court in the case cited, experience and not prophecy is the final test, and if the rates prove to be confiscatory, the company is not without remedy. Cf. Baltimore Transit Co. v. Hessey (1950) — Md —, 85 PUR NS 76, 75 A2d 76; Hessey v. Capital Transit Co. (1949) 193 Md 265, 80 PUR NS 513, 66 A2d 787, 10 ALR 2d 1114; and Capital Transit Co. v. Bosley (1948) 191 Md 502, 76 PUR NS 142, 62 A2d 267.

[8] The appellant further contends that the Commission erred in disallowing its claim that the cash on hand as of September 30, 1951, be allowed

as a part of the rate base as cash working capital. That such an allowance is a proper one has long been accepted. Cf. Chesapeake & P. Teleph. Co. v. West (DC Md 1934) 3 PUR NS 241, 7 F Supp 214, 234; and Columbus v. Public Utilities Commission (1950) 154 Ohio St 107, 86 PUR NS 496, 93 NE2d 693, 697. It is usually based on the assumption that there will be a time lag between the performance of the service and the actual collection of revenues therefor. A flat allowance estimated at thirty days may yield to a showing that the lag is not so great. Norfolk v. Chesapeake & P. Teleph. Co. (1951) 192 Va 292, 89 PUR NS 33, 64 SE2d 772, 780. In the instant case the Commission, 93 PUR NS at p. 232, found the weighted average time lag to be 23.2 days. "While much service is billed in advance, it manifestly is impossible to bill for toll service and excess local calls until after the service is given . . . ." The Commission found the weighted average lag in payment of operating expenses was a negative figure of 1.8 days.

However, the Commission, at pp. 232, 233, found that "taxes, especially Federal income taxes and excise taxes, have become a most important factor in connection with the determination of the company's need for cash working capital. . . . Taking into account all classes of taxes, it is found that, on the average, there is an elapsed time of 274.5 days in their payment. Reducing this to a dollar-day basis, and combining it with operating expenses, we arrived at the figure of 67.5. Subtracting the revenue receipt lag of 23.2 days from the operating expense plus taxes lag of 67.5 days produced a net revenue receipt lag of minus 44.3 days. This demonstrated . . . that the company received, on the average, money from its customers for services rendered before, in the ordinary course of its operations, it pays the cost of providing the service and that, therefore, there is no need for an allowance for cash working capital."

The appellant attacks this conclusion on the ground that it is an adoption of the so-called "alternative funds" theory, that funds collected from consumers for the payment of taxes are available for use by the company until the taxes are paid. It argues that the fallacy in the reasoning is that it presupposes that revenues collected are contributions by the customers and that if such revenues are used as cash working capital it is the customers who are furnishing them. Actually, it argues, the customers are paying for services, and when bills are collected they become the property of the company, citing Public Utility Comrs. v. New York Teleph. Co. 271 US 23, 31, 70 L ed 808, PUR1926C 740, 46 S Ct 363. Thus all of the funds collected are risked by the investors, not by the tax collectors or the customers.

We think the theory does not depend, however, upon the question of risk or ownership, but upon the fact that rates are calculated to yield a profit over and above taxes and the tax burden is shifted to the customers. Since these advance payments are available for current use until they become payable to the taxing authorities, there is no need to allow earnings upon a cash balance without regard to tax accruals. If allowed, there would

be a duplication in a charge already made against the ratepayer. This seems to have been the view taken by the supreme court of Pennsylvania in a recent case. Pittsburgh v. Public Utility Commission (1952) 370 Pa 305, 94 PUR NS 353, 88 A2d 59. See also Citizens Teleph. Co. v. Public Service Commission (1952) — Ky —, 94 PUR NS 383, 247 SW2d 510, 513. We find no error in the Commission's disallowance under the circumstances.

[9] The cross-appellants contend that the Commission erred in approving as a part of the annual operating expense the sum paid by it under the license contract with the American T. & T. Company. They argue that there is no relation between the amount paid (one per cent of the gross revenues) and the value of the service rendered. But it does not follow that the amount paid is excessive as of the valuation date. It would be extremely difficult to say, for example, what part of a particular dollar, spent by the parent company for research, actually went to the benefit of the Maryland Company or any other Bell System company. Nevertheless, cost allocation studies have been made, the matter was carefully studied by the Commission, and its conclusion that the payments were not unreasonable is clearly supported by the evidence. The standard contract used has been widely approved by the courts. Norfolk v. Chesapeake & P. Teleph. Co., *supra;* Public Service Commission v. Southern Bell Teleph. & Teleg. Co. (1949) 253 Ala 1, 84 PUR NS 221, 42 So2d 655; Pacific Teleph. & Teleg. Co. v. Public Utilities Commission (1950) 34 Cal2d 822, 83 PUR NS 101, 215 P2d 441; Southern Bell Teleph. & Teleg. Co. v. Public Service Commission (1948) 203 Ga 832, 75 PUR NS 471, 49 SE2d 38; Columbus v. Public Utilities Commission, *supra;* Pacific Teleph. & Teleg. Co. v. Flagg (1950) 189 Or 370, 85 PUR NS 101, 220 P2d 522; Southwestern Bell Teleph. Co. v. State Corp. Commission (1950) 169 Kan 457, 85 PUR NS 277, 219 P2d 361.

The cross-appellants contend that the Commission's action in fixing the rate of return was unreasonable and unlawful, because it did not consider or give weight to the company's failure to achieve tax savings by the use of a different capital structure. The company is, of course, a wholly owned subsidiary of the American T. & T. Company, which owns virtually all of its stock. Under this setup the local company pays income taxes at the rate of 52 per cent on its earnings, which would be considerably reduced if a part of its investment was in interest-bearing securities. It may be noted that the company does have certain short-term borrowings from the parent company. Dividends paid to the parent company are taxable at a lower rate. The effect is to shift a part of the total tax burden from the stockholders of the parent company to the local telephone users. The appellant argues that this result is due to a Federal tax policy that puts a premium on borrowed capital, not to any unsoundness or improvidence in the company's policy, as laid down by the management, over which the Commission has no direct control.

If we assume, without deciding, that the Commission was legally bound to consider and give weight to

possible or hypothetical savings in fixing the rate of return, we think it is clear that they did so in the instant case. Both of the experts who testified in the case as to the cost of capital, based their conclusions on an assumed ratio of debt to equity capital, not on the actual ratio. The Commission adopted the highest of these, as proposed by Dr. Thatcher, called by the appellees, a ratio of 45 per cent debt and 55 per cent equity capital. It found a rate of return of from 5.75 to 6 per cent to be reasonable. In so doing it virtually adopted Dr. Thatcher's recommendation. Dr. Thatcher testified that he took into account the impact of the Federal tax rates in fixing a proper debt ratio. While conceding that the determination of whether debt or equity capital should be issued was for management, the Commission, at p. 239 of 93 PUR NS, said: "Still, the Commission, in fixing a rate of return, has the right to determine what the effect thereof will be on the consumers. While having no power to direct the issuance of bonds instead of stock, we can say that the consumer should not be required to pay more than he would have to pay if the company had availed itself of an appropriate debt-equity capital structure. So, this Commission must take note of the fact that the company has no debt capital, but rather issues equity holdings to American which, in turn, creates its own debt capital, thereby permitting American to make a tax saving which would inure to the benefit of the company, if it issued its bonds instead of equity capital." There was evidence in the case from which the Commission could have found that a higher rate was justified. The rate fixed, 5.96 per cent, is one of the lowest in the nation. In adopting the lower rate it took into account the unfavorable aspects, from the consumers' point of view, of the existing capital structure. We cannot find that the Commission's action was beyond the zone of reasonableness.

Order reversed and bill and cross bill dismissed, costs to be paid by the respective appellants.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS

Samuel Vacchiano et al.

v.

New Jersey Bell Telephone Company

Docket No. 6908
January 14, 1953

COMPLAINT *by former subscriber against refusal of telephone company to restore service; denied.*

Service, § 134 — Restoration after gambling conviction — Official consent.

1. The Board requires proof of the assent of a law enforcement official before it will order the resumption of service originally discontinued at the request of such official, p. 64.

Procedure, § 36 — Commission decision — Res judicata.

2. Although some administrative agency decisions may be res judicata, the Public Utility Board, when a change in circumstances occurs, may order a rehearing and extend, revoke, or modify an order, p. 64.

Service, § 485 — Proper tribunal — Restoration after discontinuance for gambling.

3. The proper remedy of persons requesting the restoration of telephone service after a discontinuance because of gambling is in the courts at law or in equity, p. 64.

APPEARANCES: Anschelewitz & Barr, by Max M. Barr, for the complaintiffs; A. J. Bittig, for the respondent; John R. Sailer, Deputy Attorney General, for the Board of Public Utility Commissioners; David M. Lane, Director, Division of Engineering, on behalf of the Board of Public Utility Commissioners.

By the COMMISSION: This is a formal complaint of Samuel Vacchiano and Mary Vacchiano, his wife, to require the respondent, New Jersey Bell Telephone Company, to grant telephone service to them at 409 Cookman avenue, Asbury Park, New Jersey.

A hearing was held at Newark, New Jersey, on October 1, 1952, when the parties were heard and argument made.

The record of the previous action and decision in Vacchiano v. New Jersey Bell Teleph. Co. (1950) Docket No. 5280, 87 PUR NS 25, was incorporated by reference. It was stipulated by counsel for the respective parties that the prosecutor of Monmouth county refused to give his consent to the restoration of service to the complainant and that the prosecutor is opposed to the installation of a telephone at this time. It was further stipulated that almost two years have lapsed since the first complaint was made and denied.

The stipulation in the first hearing

shows that the telephone service of Sam Vacchiano was disconnected at the request of the prosecutor of Monmouth county on August 16, 1948, and that on July 8, 1949, one of the complainants, Samuel Vacchiano, was convicted of bookmaking in the Monmouth county criminal court and sentenced from one to two years to the New Jersey state prison, sentence suspended, and fined $1,000 and placed on two years' probation.

The Board now finds the facts as set out above.

[1–3] The substance of the argument of the counsel for the complainants is that Samuel Vacchiano had paid his debt to society. He and his wife should not suffer from the whim or caprice of any law enforcement official who would not give his permission to the New Jersey Bell Telephone Company to restore service to the complainants. He further stated that after a reasonable period of time, which should be determined by this Board, that this Board should require the respondents to restore service as the lack of a telephone seriously interfered with the ability of the complainants to earn a livelihood operating a boarding house.

The counsel of the respondents replied that this action was brought in the improper forum, against the improper party and that the complainants' remedy was against the prosecutor in the courts either at law or in equity. He further claimed the defense of res judicata.

The Board now considers the argument of counsel.

The Board has consistently followed the decision of not going behind the request of any law enforcement official to remove any telephone as the actions of that official are presumed to be valid. De Luisa v. New Jersey Bell Teleph. Co. (1949) Docket No. 4207, 78 PUR NS 22. However, it will inquire whether or not it is a fact that a law enforcement official requested the discontinuance. Following the same reasoning, the Board requires the proof of the assent of the same official before it will order the resumption of the service. Therefore, the complainants lack the necessary qualifications for the resumption of service.

The Board has held that it has jurisdiction over the subject matter and over the parties. Scance v. New Jersey Bell Teleph. Co. (1952) Docket No. 6199, 95 PUR NS 16. Although some administrative agency decisions may be res judicata, the Board may at any time ". . . order a rehearing and extend, revoke, or modify an order made by it." Revised Stats 48:2–40 NJSA. Middletown v. Monmouth Consol. Water Co. Docket No. 3906, September 24, 1952. There are new facts in this cause; the expiration of two years and the completion of Samuel Vacchiano's probation.

It appears that the remedy of persons requesting telephone service after discontinuance subsequent to the use of the telephone for the transmission of gambling information is in the courts at law or in equity.

The Board *denies* the complaint for the reasons stated above.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Ohio Power Plans to Invest $55,000,000 in 1953

THE Ohio Power Company plans to invest $55,000,000 during 1953—the largest one-year construction budget in the company's history. This figure is considerably higher than the amount invested in the previous record year, 1952, when approximately $40,000,000 was spent in construction throughout the company.

In general categories, the new budget reads as follows: (figures include both new construction and improvements to existing facilities): Power plants, $28,300,000; Transmission lines, $8,800,000; Distribution lines, $6,500,000; Transmission subs, $6,000,000; Distribution subs, $2,300,000; Coal lands, equipment, $1,700,000, and General, $1,400,000.

MacDonald Appointed Motorola Assistant Chief Engineer

DANIEL E. NOBLE, vice president in charge of the Communications and Electronics Division, Motorola Inc., has announced the appointment of Angus A. MacDonald to the position of assistant chief engineer in charge of two-way radio development.

In this position, Mr. MacDonald heads a group of design engineers in the development of mobile two-way radio equipment for use in the public safety, land transportation, industrial and related fields. This equipment is designed to operate in the 25-50, 152-174 and 450-470 megacycle bands.

Cope Appoints Sanson As Sales Manager

T. J. COPE, INC., Philadelphia, Pennsylvania, has announced the appointment of A. M. Sanson, Jr., as Sales Manager. He will supervise the sales of the company's line of Cable Installation Equipment which has been widely used in the electrical industry for 65 years. He will be in charge of the sales of Cope Cable Trough Systems for carrying power and control cables, and Instrof for instrument tubing installations.

Richardson Offers Bulletin On Automatic Coal Scale

THE RICHARDSON SCALE COMPANY, Clifton, New Jersey, offers a 16-page, two-color bulletin covering its new H-39 Automatic Coal Scale for weighing coal as it is fed to boilers. The new coal scale enables plant engineers automatically to maintain constant and accurate check on boiler efficiency.

Divided into five major sections, the bulletin gives construction and operating details of: (1) the belt feeder which delivers coal from bunker to weigh hopper, (2) the weigh hopper, (3) scale housing, (4) operating levers, and (5) accessories.

In addition, the bulletin gives detailed information on such special features as weigh-hopper by-pass, dust-proof seal, external controls and wiring, foolproof discharge counter, compact construction and available accessories including flexible inlet connections, remote recording of discharges, magnetic removal of tramp iron, etc.

Copies of Bulletin 0352 may be obtained from the manufacturer.

G-E Announces New Line Of Low Voltage Switchgear

A COMPLETE new line of low-voltage draw-out switchgear (600 volts a-c and below) with standardized compartment construction and completely new air circuit breakers, has been announced by the General Electric Company's Switchgear Department at Philadelphia, Pa.

Complete equipments having whatever circuit pattern is needed can be manufactured for shorter shipment from standardized circuit breaker, control-instrument and bus compartment building blocks.

Able to withstand 30-cycle momentary currents equal to their interrupting ratings (15,000 to 100,000 amperes), the new air circuit breakers used in the equipment make it possible for the first time to have fully selective tripping with all breakers applied up to their full interrupting ratings. Continuous current ratings range from 15 to 4000 amperes.

Fitler Opens New Plant in South

THE new Edwin H. Fitler Company's plant located at 4400 Florida avenue, New Orleans, Louisiana, will be formally dedicated on April 16th, followed by full scale manufacture of quality rope and twine.

(Continued on page 26)

It now will be strategically possible for Fitler to serve the South with more rapid deliveries. Dock facilities are available to this new plant. It will comprise ten acres with 145 thousand square feet of new modern buildings, that will add 10 million or more pounds per year to Fitler's production and represents an investment of over a million and one quarter dollars.

Henequen Fiber will be imported from Mexico and Cuba, Sisal from Africa, Dutch Indies, Haiti, Brazil, Venezuela and Manila from Philippine Islands and Central America. Produced from these raw materials will be Manila Rope, Sisal Rope, Wrapping Twine, Binder Twine and Baler Twine.

Charles T. Main Inc. of Boston, Massachusetts, were engaged as the architects. James F. Kirkpatrick, formerly of Philadelphia, will be the resident manager.

R-R Offers New Sales Presentation Folder

NEW ways to make sales presentations more interesting and more effective are described in "Your best sales story every time," a new folder released by Remington Rand Inc.

The suggestions included in the booklet are based on a simple system for organizing the facts, charts, pictures, prices and other data that make up a visual and oral "best sales story." Major advantages of this method are flexibility for quick adaptation of the presentation's contents, including sequence, for any particular territory or type of customer, and split-second reference to information. The sales story is presented completely and is under the salesman's control from beginning to end.

For a free copy request booklet #LL-225, write Remington Rand Inc., 315 Fourth avenue, New York 10, New York.

Uptegraff Issues Bulletin On Power Transformers

A NEW four-page bulletin on power transformers has been published by R. E. Uptegraff Manufacturing Company. Featured in the brochure are design and construction features, including method of eliminating leaks, shot blasting, undercoating, flanged drain valve and sampling device, and testing and inspecting procedure. Uptegraff power transformers are available in sizes up to 10,000 KVA, 115 KV.

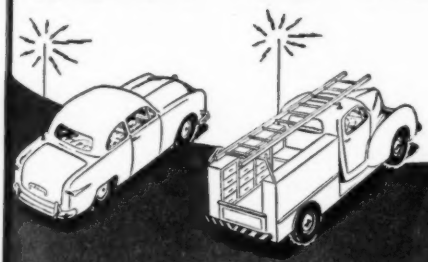
Compressor Truck Assembly Offered by Davey Compressor

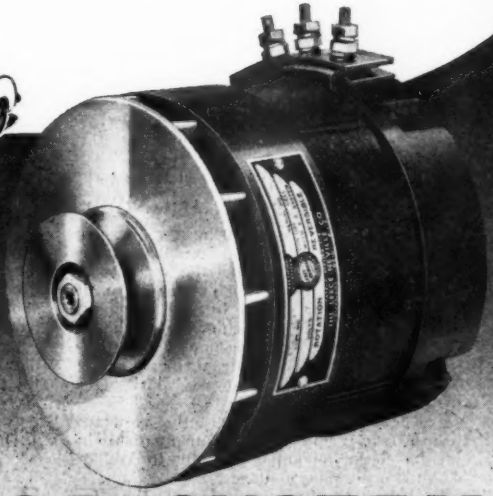
A NEW truck-mounted air compressor assembly, known as the "Air Van," is announced by Davey Compressor Company, Kent, Ohio.

Designed around the recently-introduced Fageol Van truck, manufactured by Twin Coach Company, Kent, Ohio, the unit is said to be the most compact and efficient compressor truck assembly ever developed. Because of its

(*Continued on page 28*)

OVER 6 YEARS
PROOF OF PERFORMANCE





Leece-Neville
ALTERNATOR SYSTEM

SOME OF THE MANY UTILITIES USING THE LEECE-NEVILLE ALTERNATOR SYSTEM

Public Service Co. of New Mexico
Hydro Electric System, Winnipeg
Light & Water Department, Columbus, Miss.
Northwestern Electric Coop., Okla.
Corn Belt Electric Coop., Bloomington, Ill.
The California Electric Power Co., Riverside
The Dayton Power and Light Co.
Peoples Gas, Light and Coke Co., Chicago
Portland General Electric Co., Portland, Ore.
Jackson Electric Dept., Jackson, Tenn.
Quebec Hydro-Electric Commission

Since 1946 Leece-Neville AC-DC Alternator Systems have been delivering unmatched performance. On 2-way radio cars and trucks . . . or wherever current demands are high, L-N Alternators give:

- *25 to 35 amps with engine idling*
- *ample capacity to carry the entire electrical accessory load*
- *fully charged batteries always*
- *better radio operation*

There are L-N Alternator Systems rated at 50 amps and 80 amps for 6-volt systems; 60 to 150 amps for 12-volt systems.

Ask us to arrange a demonstration of the L-N Alternator for your fleet. Or write for all the facts. The Leece-Neville Company, Cleveland 14, Ohio. *Distributors in principal cities . . . Service Stations everywhere.*

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Heavy Duty Automotive Electric Equipment for Over 43 Years

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integral construction, the Fageol Van provides approximately 200 more cubic ft. of playload space than any truck of similar length and wheelbase. Consequently, the Davey Compressor occupies only about one quarter of the truck body space, leaving the remainder available for the transportation of men, tools and materials.

Air Vans are offered with a choice of either 105 c.f.m. or 160 c.f.m. standard Davey "Auto-Air" compressors. These are driven directly from the truck engine through a Davey Heavy Duty Power Takeoff installed in the truck driveshaft.

Air Vans, according to the manufacturer, are especially suitable for use by public utilities.

Calcinator Appoints Director Of Marketing for Electric Model

THE rapidly growing market for the electric model Calcinator automatic garbage disposal unit has necessitated the appointment of a Director of Marketing expressly for the electric unit, in the newly formed Calcinator Corporation, Bay City, Michigan, according to a recent announcement. The new office will be assumed by Hardy B. Payor, formerly a vice-president of Landers, Frary & Clark, New Britain, Connecticut.

George Kennedy, until recently associated with the Consumers Power Company of Michigan, has been appointed assistant to Willard M. Milbourne, sales manager.

According to the announcement, thus far, Calcinator is the only manufacturer of an electrically operated incinerator. The firm, until recently a division of the Valley Welding & Boiler Company, Bay City, Michigan, is confident that their expanded 1953 program will assure the electric Calcinator a place as one of the most widely accepted electric household appliances.

Johns-Manville Promotion

LOUIS F. FRAZZA, president of the New Jersey Society of Professional Engineers, has been promoted to Staff Manager of the Transite Pipe Department at Division Headquarters at Johns-Manville.

Mr. Frazza, who joined J-M in 1937 has long been associated with public works projects. He recently was assistant manager of the company's New York District Transite Pipe Department.

R-R Folder Describes Microfilm Enlargement Service

A NEW folder "Continuous Microfilm Enlargement Service" released by Remington Rand Inc., describes how it is possible to get extra copies of original records and obtain greater use of microfilmed records.

Accurate reproductions produced at high speed at tremendous savings are claimed to be available with this new service which allows a convenient means to restore any or all of a microfilm file. In the present business situation microfilm is being increasingly used. Entire duplicate files can be made up on microfilm and paper copies produced when required.

For a free copy request booklet #BDS-3 Rev. 1 write Remington Rand Inc., 315 Fourth avenue, New York 10, New York.

G-E Releases Film on Lightning And Lightning Protection

"LIGHTNING Masters," a new 30-minute full color sound film, has been announced by the General Electric Company's Distribution Transformer Department at Pittsfield, Massachusetts. This new film release depicts the phenomena of natural lightning and tells a story of lightning research and the development of modern protective equipment.

The film cites the important advances made over the past three decades, during which lightning has been resolved from a mysterious force of nature of quantitative engineering facts.

Through a series of simple animated drawings, the movie portrays how lightning is geenrated by nature; how a lightning bolt strikes; how a lightning arrester works to protect power lines and equipment from damage.

An eight page bulletin (GEA-5750), further describes the film. Copies are available from the General Electric Company, Schenectady 5, New York.

Ebasco Safety Awards Presented To Construction Forces

THE annual Ebasco "Gold Safety Award" was presented recently to the construction organization of the E. M. Poston steam electric station, a new Columbus and Southern Ohio electric company plant, in a special ceremony held at the station in Athens, Ohio. Presentation of the gold plaque was made by W. T. Rogers, a safety consultant with Ebasco Services Incorporated, the engineering construction and business consulting firm.

The gold plaque will be displayed in the E. M. Poston steam electric station as a permanent tribute to the fine safety record made between July 1, 1951 and June 30, 1952—the period of the present awards. The award was presented for the achievement of an Injury Index 84.03% below (better than) the national average in the construction industry.

The Ebasco "Silver Safety Award" was presented to the Murray Gill steam electric station, Kansas Gas and Electric Company's new plant, in Wichita, Kansas. This award was presented for achieving an Injury Index 62.32% below the national construction industry average.

An Ebasco "Certificate of Achievement" Safety Award was presented to the construction organization of the Hawthorne steam electric station, Kansas City Power and Light Company plant at Kansas City, Kansas. The award was given for achieving an Injury Index 42.25% below the national average.

An Ebasco "Certificate of Achievement" Safety Award was also presented to the construction organization of the Westinghouse-Columbus Electric plant for achieving an Injury Index 36.25% below the national construction industry average.

w International R-120 Series with special service-utility bodies. GVW ratings from 5,200 to 6,200 lbs. 115 and 127 inch wheelbases.

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The 307 features in the *New* International Truck e have been *proved* in the world's most advanced uck Engineering Laboratory; *proved again* at ternational Harvester's 4000-acre desert Proving ound at Phoenix, Arizona.

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The *New* International Trucks offer an un- tched combination of values—the right truck for e job, unequalled performance, lowest mainte- nance and operating costs, maximum driver com- fort and safety.

Now—the features you want— in America's most complete truck line

New International styling identified by the IH emblem . . . **Exactly the right power** for every job. First truck builder to offer choice of gasoline or LP gas with Underwriters' Laboratories listing in 1½-ton sizes and other models . . . **Designed by drivers for drivers.** Comfo-Vision cab with one-piece Sweepsight windshield. New comfort and interior styling . . . **Steel-flex frames** proved best in the field . . . **Transmissions** to meet any operating requirement . . . **296 Wheelbases** ranging from 102 inches up . . . **Easy starting and greater fuel economy** . . . **Wide range** of axle ratios for all models . . . **Real steering comfort and control** . . . Sizes from ½-ton to 90,000 lbs. GVW rating.

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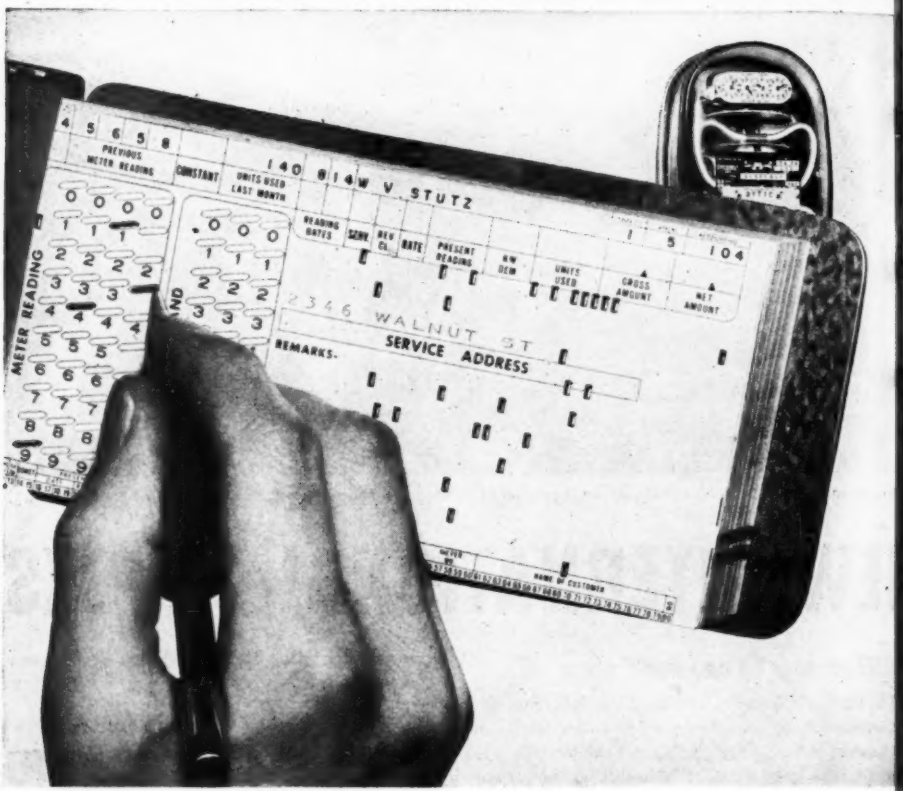

The ONLY Improvement Ever Made in Meter Reading!

IBM Mark Sensing Makes the Meter Reader's Job Easier

Simply by making several short pencil marks on the face of this IBM Card, the meter reader is spared the trouble and inconvenience of having to subtract and make longhand entries.

No longer does the Accounting Department complain about his arithmetic or the legibility of his handwriting. And no longer is there a possibility of transcription errors, because IBM electronic and electric machines take over where the meter reader leaves off—speeding the job from start to finish.

This is just one of the many IBM contributions to utility accounting. Write Dept. D for a copy of the 1952 edition of IBM Customer Accounting for Utilities.

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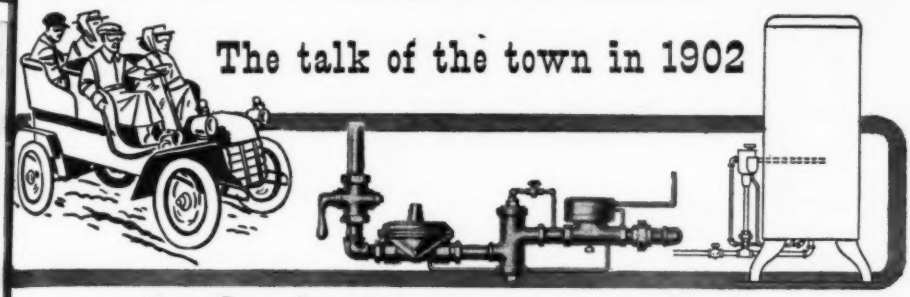
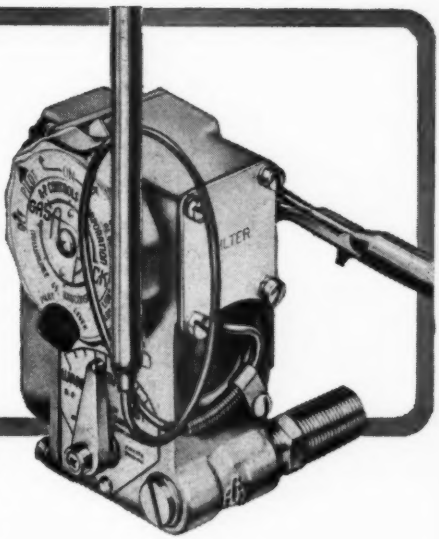


But here's what you want today!

Gasapack Water-Heater Control



Don't continue to chug along with old-style, "Model-T" arrangements for controlling the flow of gas for water heaters. The new A-P Model 50 Gasapack is a modern, compact, 100% automatic, single-unit control that you can depend on to maintain close, even temperatures with complete safety.

It efficiently combines all controls in one compact unit. This includes main and pilot cocks, pilot filter, 100% automatic shut-off, safety pilot and automatic main valve.

More, the Gasapack Control can be mounted integrally with the burner (as shown above) so that the complete assembly can be installed or removed for service as a single unit . . . reducing assembly costs, and simplifying service. A contact-type, temperature sensitive thermo-bulb eliminates a spud connection. There's no chance for leakage . . . no danger of water entering the gas line or gas mixing with water.

Get all the facts about this trouble-proof A-P control. Write today for bulletin

The finest automatic control ever offered...here are 10 big reasons why!

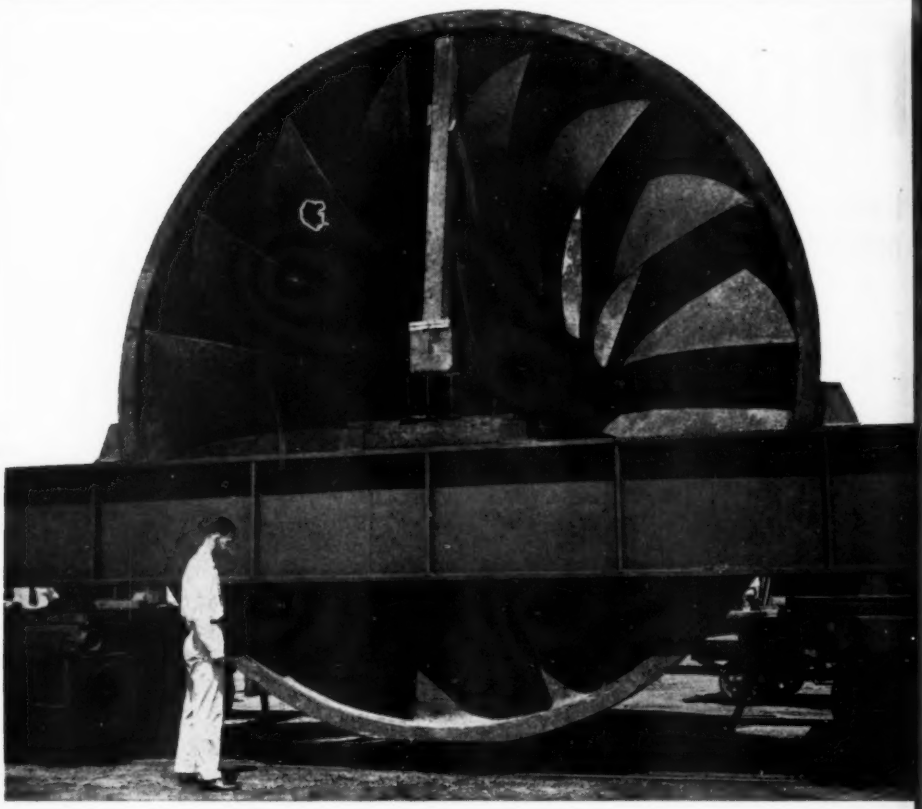
- Provides close, even water temperature regulation.
- Large pilot filter capacity (3 cu. ft.) — ample for any requirement.
- Automatic recycling, high temperature, high pressure shut-off.
- No spud to cause leakage.
- Control unit and burner can be mounted integrally — installed, removed and serviced as a unit.
- All orifices removable from front for easy service.
- No possibility of water getting into gas line, or vice versa, since the two aren't in contact.
- 100% safe, automatic operation on all gases; manufactured, natural or L-P.
- All parts and valve seats impervious to gases; immune from corrosion.
- Easy to clean and service.

A-P CONTROLS CORPORATION

DEPENDABLE *Controls*

For Modern Gas Heating

2470 N. 32nd St., Milwaukee 45, Wisconsin
In Canada: A-P Controls Corp., Ltd., Cooksville, Ontario



FACILITIES FOR THE SMALLEST OR THE LARGEST

The 225-acre Newport News plant includes plate steel and machine shops equipped with a complete variety of tools to fabricate items of water power equipment of any size. Contracts received by Newport News for hydraulic turbines with an aggregate rated output in excess of 8,000,000 horsepower have included units as high as 165,000 horsepower and as low as 500 horsepower.

Supplementing the extensive facilities are the equally important experienced and skilled personnel at Newport News to design and build such equipment.

Your inquiries for hydraulic turbines of any size will receive prompt attention.

Write for illustrated booklet on water power equipment.

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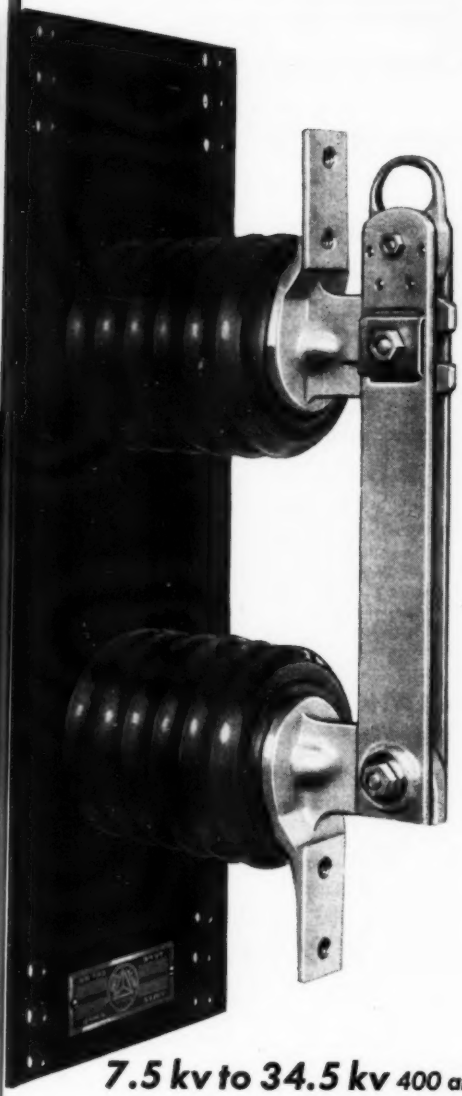

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INDOOR SWITCHING EQUIPMENT

Combines Economy and Service

The complete line of Delta-Star Indoor Switching Equipment has been proven by wide-spread acceptance and use through years of service. Exclusive features of design reduce overall cost by reducing installation time and keeping maintenance expenditures at an absolute minimum.

Construction is simple and sturdy. High pressure silvered contacts prevent oxidation and reduce current loss. These switches comply with all NEMA standard ratings and will carry full rated loads continuously without undue heating. Engineered and built throughout to Delta-Star exacting standards for long and efficient life.

***7.5 kv to 34.5 kv** 400 amp. to 500 amp., Hook or Group Operated*

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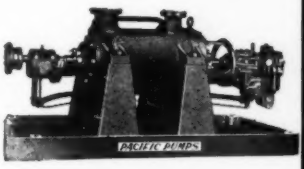

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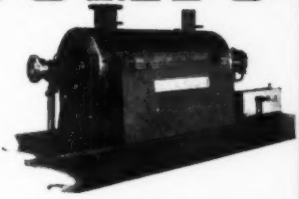

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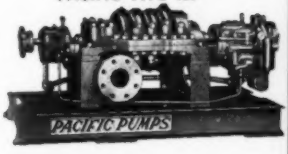

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You Will Receive from Pacific – A custom built pump with pressure castings, hydrostatic tested . . . each part precision finished and inspected . . . one-piece impellers, dynamically balanced . . . performance tested and shipped with parts protected with rust inhibitor. *Write for Bulletin Number 109.*

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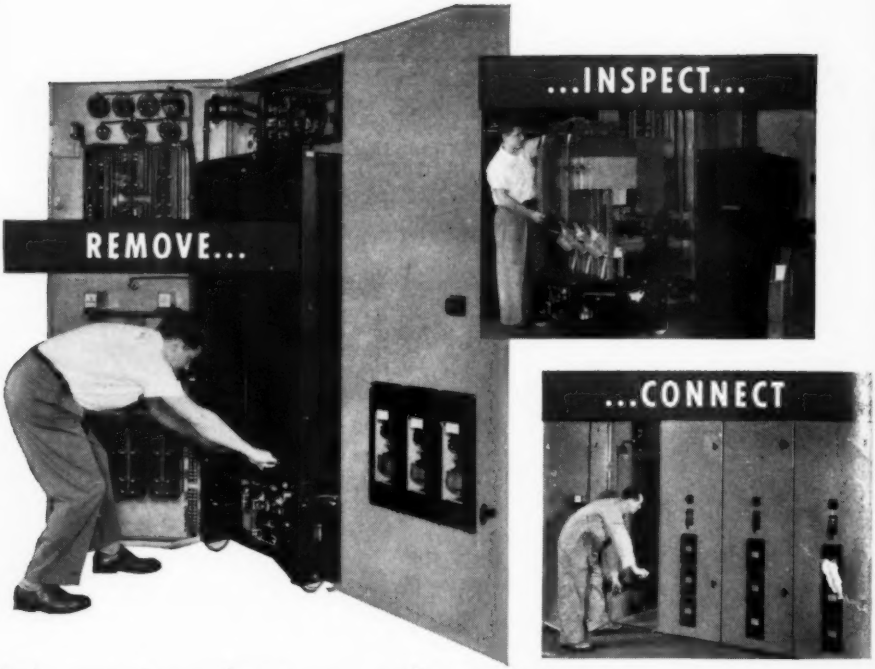

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You can remove breakers, inspect them, and replace them in only a few minutes when you use Westinghouse Type DH Metal-Clad Switchgear. Because breakers are drawn out horizontally, no lowering or lifting is necessary. A shutter indicator, visible from the front, provides positive indication of disconnect position. As the breaker is withdrawn, a grounded metal shutter closes to isolate stationary contacts.

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For complete information on Westinghouse Metal-Clad Switchgear for indoor or outdoor service write for Booklet B-5306. Address: Westinghouse Electric Corporation, P. O. Box 868, Pittsburgh 30, Pennsylvania. J-6079-A

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